

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Appeals for
the Federal Circuit and the United
States Court of International Trade

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Divisions

(T.D. 84-145)

Bonds

Approval and discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: July 9, 1984.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Auto Forwarders Inc., 299 Parkside Ave., Buffalo, NY; motor carrier; Washington International Ins. Co.	May 21, 1984	May 25, 1984	Buffalo, NY \$25,000
Best Way Transport Inc., P.O. Box 17039, Portland, OR; motor carrier; Industrial Indemnity Co. D 2/25/83	Aug. 8, 1982	Aug. 16, 1982	Portland, OR \$25,000
Bitterroot International Systems Inc., P.O. Box 9137, Missoula, MT; motor carrier; Hartford Accident & Indemnity Co.	Apr. 13, 1984	May 18, 1984	Great Falls, MT \$40,000
Brookville Transport Limited, P.O. Box 2332, St. John's, New Brunswick, Canada; motor carrier; Royal Ins. Co. of America (PB 8/25/81) D 5/14/84 ¹	Feb. 15, 1984	May 14, 1984	Portland, ME \$25,000
Buffalo Fuel Corp., 2445 Allen Ave., Niagara Falls, NY; motor carrier; The Aetna Casualty and Surety Co.	Mar. 28, 1984	May 14, 1984	Buffalo, NY \$25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Can Am Rapid Courier Inc., 78 John Glenn Dr., North Tonawanda, NY; motor carrier; Firemen's Insurance Company of Newark, NJ	Apr. 9, 1984	May 7, 1984	Buffalo, NY \$25,000
Carthage Freight Line, Inc., P.O. Box 101028, Nashville, TN; motor carrier; Reliance Ins. Co. (PB 3/16/83) D 6/1/84 ²	Apr. 11, 1984	June 1, 1984	New Orleans, LA \$25,000
Continental Cattle Carriers Ltd., P.O. Box 55, Station J, Calgary, Alberta, Canada; motor carrier; Old Republic Ins. Co.	May 15, 1984	May 24, 1984	Great Falls, MT \$25,000
Customer Service, Inc., P.O. Box 489, Red Cloud, NB; motor carrier; National Surety Corp.	Jan. 12, 1984	May 10, 1984	Milwaukee, WI \$25,000
Desert Express, 2550 E. 28th St., Los Angeles, CA; motor carrier; Transport Indemnity Co. D 12/22/71	June 5, 1969	June 10, 1969	San Francisco, CA \$25,000
James H. Edwards, d.b.a. Tejano Line, 2858 Cresthaven, P.O. Box 172, Grapevine, TX; motor carrier; United States Fidelity & Guaranty Co. D 5/24/84	June 15, 1982	July 13, 1982	Dallas/Fort Worth, TX \$25,000
Four Winds Van Lines, Inc., 4275 Campus Point Court, P.O. Box 81985, San Diego, CA; motor carrier; The American Ins. Co. (PB 7/22/83) D 2/17/84	Jan. 31, 1984	Feb. 17, 1984	Baltimore, MD \$50,000
Hemingway Transport, Inc., 438 Dartmouth St., New Bedford, MA; motor carrier; National Union Fire Ins. Co. D 1/3/84	Jan. 19, 1983	Dec. 28, 1983	Boston, MA \$50,000
Walter Holm and Co., 847 Grand Ave., Nogales, AZ; motor carrier; United States Fidelity and Guaranty Co. D 2/13/84	Oct. 27, 1964	Nov. 19, 1964	Nogales, AZ \$10,000
Hunt Super Service, Inc., Route 50 North, Box 270, Bradley, IL; motor carrier; United States Fidelity and Guaranty Co. (PB 5/17/83) D 5/18/84 ³	May 10, 1984	May 18, 1984	Chicago, IL \$25,000
Huss, Inc., Hwy 92 West; P.O. Box 666, Chase City, VA; motor carrier; United States Fidelity and Guaranty Co.	Mar. 26, 1984	May 21, 1984	Baltimore, MD \$25,000
Inter Modal Xpress, 885 Bailey Ave., Buffalo, NY; motor carrier; St. Paul Fire & Marine Ins. Co.	Mar. 30, 1984	May 18, 1984	Buffalo, NY \$40,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
IMFS, Inc., d.b.a. Interstate Systems, P.O. Box 175, 110 Ionia N.W., Grand Rapids, MI; motor carrier; The Travelers Indemnity Co. 6/1/84	Aug. 25, 1983	Aug. 30, 1983	Detroit, MI \$50,000
Imperial Transportation, Inc., P.O. Box 1149, Cerritos, CA; motor carrier; The Ohio Casualty Insurance Co.	Mar. 15, 1984	May 15, 1984	Los Angeles/Long Beach, CA \$50,000
Interstate Systems—see: IMFS, Inc.			
Jan Transport Inc., 16 Central Ave., Tenafly, NJ; motor carrier; American Manufacturers Mutual Ins. Co. D 5/23/84	June 4, 1982	July 30, 1982	Newark, NJ \$50,000
Marine Supply Co. Inc., 11 Isabella St., Charleston, SC; motor carrier; United States Fire Ins. Co.	Apr. 26, 1984	Apr. 27, 1984	Charleston, SC \$25,000
Marine Transport Co., P.O. Box 2142, Wilmington, NC; motor carrier; Washington International Ins. Co. D 5/16/84	June 1, 1981	June 1, 1981	Wilmington, NC \$25,000
Matlack Inc., 10 W. Baltimore Ave., Landsdowne, PA; motor carrier; Insurance Co. of North America PB 6/1/80) D 8/29/83 ⁴	Aug. 8, 1983	Aug. 30, 1983	Philadelphia, PA \$50,000
Midwest Emery Freight System, Inc., Joliet Rd. & First Ave., McCook, IL; motor carrier; Heritage Ins. Co. of America D 5/18/84	Oct. 30, 1982	Jan. 26, 1983	Chicago, IL \$50,000
Mississippi Valley Airlines Inc., P.O. Box 949, Quad City Airport, Moline, IL; air carrier; Old Republic Ins. Co.	Apr. 17, 1984	May 9, 1984	Chicago, IL \$50,000
National Cartage Co., 5005 Newport Dr., Rolling Meadows, IL; motor carrier; National Surety Corp. D 5/18/84	Oct. 20, 1982	Nov. 4, 1982	Chicago, IL \$25,000
Northern Airways, Inc., Burlington Int'l Airport, South Burlington, VT; air carrier; The Travelers Indemnity Co.	May 8, 1984	May 22, 1984	St. Albans, VT \$100,000
Pasha Truckway, 1301 Canal Blvd., Richmond, CA; motor carrier; The Aetna Casualty & Surety Co. D 5/31/84	Apr. 22, 1975	June 2, 1975	San Francisco, CA \$25,000
Phillips Bros. Warehousing & Distribution Corp., 25 Thomas Ave., Baltimore, MD; motor carrier; Firemans Fund Ins. Co. (PB 3/13/81) D 4/27/84 ⁵	Mar. 13, 1984	Apr. 27, 1984	Baltimore, MD \$50,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
S. & A. Trucking Co.—see: Santiago, Jose E.			
Jose E. Santiago d.b.a. S. & A. Trucking Co., P.O. Box 40861, Minillas Sta., Santurce, PR; motor carrier; Universal Ins. Co. (PB 2/17/82) D 5/9/84 ⁶	Mar. 14, 1984	May 9, 1984	San Juan, PR \$25,000
Southwest Freight Lines, Inc., 1400 Kansas Ave., Kansas City, KS; motor carrier; The Travelers Indemnity Co. D 6/1/84	June 24, 1982	July 1, 1982	Detroit, MI \$50,000
Standard Corp.—see: Standard Warehouse Trucking			
Standard Warehouse Trucking, div. of Standard Corp., 1200 Bluff Rd., P.O. Box 5263, Columbia, SC; motor carrier; United States Fidelity & Guaranty Co.	Apr. 30, 1984	May 16, 1984	Charleston, SC \$25,000
Super Motor Lines, Inc., P.O. Box 6553, Greensboro, NC; motor carrier; Ohio Casualty Ins. Co. D 3/31/84	Mar. 10, 1982	Mar. 24, 1982	Wilmington, NC \$50,000
Swift Transportation Co., 5601 West Mohave, Phoenix, AZ; motor carrier; Fireman's Fund Ins. Co. (PB 6/19/79) D 3/31/84 ⁷	Mar. 31, 1984	Mar. 31, 1984	Nogales, AZ \$50,000
Tejano Line—see: Edwards, James H.			
Trans Freight Express, Inc., 145 Route 46, Wayne, NJ; motor carrier; Insurance Company of North America	Apr. 3, 1984	May 29, 1984	Newark, NJ \$50,000
Trans-United Inc., 2733 Pacific Coast Highway, Torrance, CA; motor carrier; Pacific Employers Ins. Co. D 5/18/84	Nov. 24, 1971	Nov. 26, 1971	San Francisco, CA \$25,000
Trucking Services, Inc., P.O. Box 229, Carlinville, IL; motor carrier; The American Ins. Co. D 5/5/84	Jan. 14, 1983	Mar. 3, 1983	St. Louis, MO \$50,000
Tryco Trucking Co., Inc., P.O. Box 8825, Charlotte, NC; motor carrier; Hartford Accident & Indemnity Co. D 5/16/84	Oct. 7, 1980	Sept. 28, 1981	Wilmington, NC \$25,000
U.S. Overseas Airlines, Inc., P.O. Box 234, Wildwood, NJ, air carrier; United Pacific Ins. Co. D 5/18/84	May 27, 1961	June 14, 1961	San Francisco, CA \$50,000
Wade Transportation Co., Inc., P.O. Box 2216, Terminal Annex, Los Angeles, CA; motor carrier; Hartford Accident & Indemnity Co.	Oct. 27, 1983	May 15, 1984	Los Angeles/Long Beach, CA \$50,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Wall Delivery Service, Inc., 3501 Manchester Dr., Charlotte, NC; motor carrier; American Manufacturers Mutual Ins. Co. D 5/16/84	May 26, 1983	May 31, 1983	Wilmington, NC \$25,000
Wesco Banana Co., Inc., 48 Harris Ave., Providence, RI; motor carrier; St. Paul Fire & Marine Ins. Co.	Mar. 2, 1984	Apr. 30, 1984	Providence, RI \$25,000
Wheeler Airlines, P.O. Box 12034, Research Triangle Park, NC; air carrier; Ins. Co. of North America D 5/16/84	Dec. 15, 1980	Jan. 19, 1981	Wilmington, NC \$25,000

¹ Surety is Washington International Ins. Co.

² Surety is The American Insurance Co.

³ Surety is The Travelers Indemnity Co.

⁴ Surety is American Home Assurance Co.

⁵ Surety is Peerless Ins. Co.

⁶ Principal is Jose E. Santiago—Branderberg d.b.a. S & A Trucking Co.

⁷ Surety is Commercial Union Ins. Co.

BON-3-03
216954

EDWARD B. GABLE, Jr.,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 84-146)

Bonds

Approval and discontinuance of consolidated aircraft bonds (air carrier blanket bonds), Customs Form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different; the information is shown in a footnote at the end of the list.

Dated: July 9, 1984.

Name of principal and surety	Date term commences	Date of approval	Filed with district director/area director/amount
Bard Air Corp., 11206 Connor Ave., Detroit, MI; Insurance Company of North America.	Apr. 6, 1984	June 12, 1984	Detroit, MI \$100,000s3

Name of principal and surety	Date term commences	Date of approval	Filed with district director/area director/amount
The foregoing principal has been designated a carrier of bonded merchandise.			
Transamerica Airlines, Inc., Oakland International Airport, Box 2504, Oakland, CA; St. Paul Fire & Marine Ins. Co.	May 21, 1984	May 2, 1984	San Francisco, CA \$100,000
The foregoing principal has been designated a carrier of bonded merchandise.			

BON-3-01
217082

EDWARD B. GABLE, Jr.,
Director,
Carriers, Drawback and Bonds Division.

19 CFR Part 24

(T.D. 84-147)

CUSTOMS REGULATIONS AMENDMENT REGARDING COLLECTION OF MEDICARE COMPENSATION COSTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document implements, on a permanent basis, an interim amendment to the Customs Regulations which allows Customs to include in charges assessed to parties-in-interest for reimbursable services provided by Customs officers, Medicare compensation costs equal to 1.3 percent of the assessed amount. The inclusion of these costs in assessed charges will result in at least partial recovery of Customs' cost of matching employees' statutorily mandated contribution for Medicare coverage. The estimated recovery of Medicare costs by Customs is approximately \$500,000 annually.

EFFECTIVE DATE: July 16, 1984.

FOR FURTHER INFORMATION CONTACT: James Kenny, Headquarters Accounting Division, (202-566-2021), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

By T.D. 84-41, published in the Federal Register on February 14, 1984 (49 FR 5607), section 24.17(f), Customs Regulations (19 CFR

24.17(f)), was amended on an interim basis to allow Customs to include in charges assessed to parties-in-interest for reimbursable services provided by Customs officers, Medicare compensation costs equal to 1.3 percent of the assessed amount. That document, which set forth in detail the background of the statutory and regulatory provisions which provide Customs with the administrative authority to recover Medicare compensation costs, provided a 60-day period for public comments, and delayed the effective date of the amendment to allow for full consideration of written comments received. No comments were received. Accordingly, the amendment made on an interim basis by T.D. 84-41 is being adopted on a permanent basis, without change.

INAPPLICABILITY OF NOTICE PROVISION

Because of the ongoing loss of revenue caused by the current inability to collect these monies from parties-in-interest, it was determined that, pursuant to 5 U.S.C. 553(b)(3)(b), notice and public procedure were inapplicable and unnecessary. Accordingly, this amendment was adopted on an interim basis effective April 16, 1984. Because it has been effective since that date, good cause exists for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

E.O. 12291 AND REGULATORY FLEXIBILITY ACT

Inasmuch as Customs does not believe that the amendment meets the criteria for a "major rule" within the meaning of section 1(b) of E.O. 12291, a regulatory impact analysis has not been prepared.

Pursuant to the provisions of section 5 of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is hereby certified that the regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

DRAFTING INFORMATION

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 24

Accounting, Claims, Customs duties and inspection, Imports, Taxes, Wages.

AMENDMENT TO THE REGULATIONS

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING
PROCEDURE

Section 24.17, Customs Regulations (19 CFR 24.17), is amended by adding a new paragraph (f), as set forth below:

§ 24.17 Other services of officers; reimbursable.

(f) *Medicare Compensation Costs.* In addition to other expenses and compensation chargeable to parties-in-interest as set forth in this section, such persons shall also be required to reimburse Customs in the amount of 1.3 percent of the reimbursable compensation expenses incurred. Such payment will reimburse Customs for its share of Medicare costs.

(Pub. L. 97-248, Sept. 3, 1982, 96 Stat. 324; 31 U.S.C. 9701 (19 U.S.C. 267 and 1451))

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: July 2, 1984.

EDWARD T. STEVENSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, July 16, 1984 (49 FR 28700)]

19 CFR Part 4

(T.D. 84-148)

CUSTOMS REGULATIONS AMENDMENT RELATING TO PREVENTION OF
POLLUTION BY OCEANGOING VESSELS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to the prevention of oil pollution by oceangoing vessels. It finalizes interim regulations under which a district director of Customs is permitted, upon the request of the Coast Guard, to refuse or revoke the clearance or permit to proceed of a vessel until otherwise notified by the Coast Guard. The document will enable Customs to implement the provisions of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973. This action will protect and preserve the marine environment by reducing the amount of oily wastes discharged into the sea by oceangoing vessels of the U.S., and those of foreign countries within the navigable waters of the United States.

EFFECTIVE DATE: July 16, 1984.

FOR FURTHER INFORMATION CONTACT: John Mathis, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL Protocol) was established to protect the marine environment from pollution caused by the discharge of oil from "oceangoing" vessels. The term "oceangoing" refers to those vessels not operating exclusively on the Great Lakes which are certified for oceans or coastwise service beyond 3 miles from land. The MARPOL Protocol was ratified by the United States and entered into force on October 2, 1983. It requires oceangoing ships of the United States, and those of foreign countries within the navigable waters of the United States, to comply with the preventive provisions contained in the Protocol. The provisions include requirements for the installation of oily-water separating equipment for ships over 400 gross tons, the carrying on board of an International Oil Pollution Prevention (IOPP) Certificate, maintaining a MARPOL Oil Record Book, and observing the limitations on the operational discharge of oil.

The Secretary of Transportation, acting through the U.S. Coast Guard, administers and enforces the provisions of the MARPOL Protocol. Pursuant to the Act to Prevent Pollution from Ships, 1980 (Pub. L. 96-478, 33 U.S.C. 1901-1911), the Secretary of Transportation has prescribed regulations to implement the provisions of the MARPOL Protocol (see 33 CFR Part 151).

The Secretary of the Treasury, acting through Customs, and upon request of the Secretary of Transportation, also administers and enforces the provisions of the MARPOL Protocol. Specifically, 33 U.S.C. 1904(f) provides that the Secretary of the Treasury may refuse or revoke the clearance or permit to proceed of a vessel under a detention order (33 U.S.C. 1904(e)) if requested to do so by the Secretary of Transportation.

So that Customs may directly and efficiently implement the provisions of the MARPOL Protocol, Part 4, Customs Regulations (19 CFR Part 4), was amended by publication of interim regulations as T.D. 84-36 in the Federal Register on February 1, 1984 (49 FR 3984), which added a new section 4.66c. The new section, which became effective on February 1, 1984, provides that if a district director of Customs receives a notification from a Coast Guard officer that an order has been issued to detain a vessel, the district director shall refuse or revoke the clearance or permit to proceed to the vessel. An order to detain a vessel may be issued either because the vessel does not have a valid certificate on board, or because the

condition of the ship's equipment does not agree with the particulars of the MARPOL Protocol, whether a certificate is on board or not (i.e., countries not a party to the MARPOL Protocol must nonetheless comply with its provisions). The district director shall not grant clearance or issue a permit to proceed to the vessel until notified by a Coast Guard officer that detention of the vessel is no longer required.

New section 4.66c additionally provides that a district director shall, upon request by a Coast Guard officer, refuse or revoke the clearance or permit to proceed of a vessel, if the vessel, its owner, operator, or person in charge, is liable for a fine or civil penalty, or reasonable cause exists to believe that they may be subject to a fine under the provisions of (1) 33 U.S.C. 1908 for violating the MARPOL Protocol, (2) the Act to Prevent Pollution from Ships, 1980 (33 U.S.C. 1901-1911), or (3) regulations issued thereunder. The district director may grant clearance or a permit to proceed upon notification that a bond or other security satisfactory to the Coast Guard has been filed.

DISCUSSION OF COMMENTS

Only one comment was received in response to the interim regulations. The commenter stated that the interim regulations are too limited in scope in that they do not apply to ships of countries not a party to the MARPOL Protocol. This observation is based on the fact that the interim regulations, as written, allow for the refusal or revocation of the clearance or permit to proceed in only two situations: (1) when the vessel does not have a valid certificate on board, or (2) the condition of the vessel or the equipment of the vessel does not substantially agree with the particulars of its certificate. In either case, a prerequisite to the refusal or revocation of the clearance or permit to proceed is that the vessel is required to have an IOPP certificate. Since only ships of countries that are parties to the MARPOL Protocol are required to have IOPP certificates, the interim regulations result in more favorable treatment to non-party countries.

After further review of the matter, Customs agrees with the commenter. Title 33, United States Code, section 1902(c), (33 U.S.C. 1902(c)), provides, "The Secretary shall prescribe regulations applicable to the ships of a country not a party to the MARPOL Protocol to insure that their treatment is not more favorable than that accorded ships of parties to the MARPOL Protocol." In addition, section 151.21, title 33, Code of Federal Regulations (33 CFR 151.21), refers to the MARPOL Protocol as Marpol 73/78 and provides that certain vessels of countries "not a party to Marpol 73/78, must have on board valid documentation showing that the ship has been surveyed in accordance with and complies with the requirements of Marpol 73/78." Section 151.23(b), title 33, Code of Federal Regulations, (33 CFR 151.23(b)), provides, in part, that a vessel that

does not comply with 33 CFR Part 151 may be detained by order of Coast Guard officials at the port where the violation is discovered. Therefore, to reflect the applicability of the MARPOL Protocol to ships of countries not a party to it, Customs is amending its regulations further by adding a new section 4.66(c).

In addition to this change, several other minor changes have been made. Section 4.66c(b), which concerns fines and contains the legal citations, has been redesignated section 4.66c(a). To make that subsection conform to the provisions of 33 U.S.C. 1908, the words "or civil penalty" have been added after the word "fine". The redesignation of section 4.66c(a), which concerns retention of vessels for lack of a certificate, as section 4.66c(b) will allow the new section 4.66c(c) to follow in logical sequence.

Other than for the changes discussed above, Customs has determined to adopt the interim regulations set forth in T.D. 84-36.

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Because the MARPOL Protocol has already been ratified by the United States and entered into force on October 2, 1983, the amendment enabling Customs to implement its provisions was an immediate necessity in order to protect the marine environment from further oil pollution from oceangoing vessels. Therefore, it was determined that, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure were impracticable, unnecessary and contrary to the public interest. For the same reasons, Customs determined that good cause existed for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

EXECUTIVE ORDER 12291

It has been determined that this amendment is not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this amendment because the rule will not have a significant economic impact on a substantial number of small entities.

Accordingly, the document contains a certification pursuant to section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b) that the amendment will not have a significant economic impact on a substantial number of small entities.

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 4

Coastal Zone, Oil pollution, Vessels, Water pollution control.

AMENDMENT TO THE REGULATIONS

Part 4, Customs Regulations (19 CFR Part 4), is amended as set forth below.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: July 2, 1984.

EDWARD T. STEVENSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, July 16, 1984 (49 FR 28694)]

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Part 4, Customs Regulations, is amended by adding a new section 4.66c to read as follows:

§ 4.66c Oil pollution by oceangoing vessels.

(a) If a district director receives a request from a Coast Guard officer to refuse or revoke the clearance or permit to proceed of a vessel because the vessel, its owner, operator, or person in charge, is liable for a fine or civil penalty, or reasonable cause exists to believe that they may be subject to a fine or civil penalty under the provisions of (1) 33 U.S.C. 1908 for violating the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL Protocol), (2) the Act to Prevent Pollution for Ships, 1980 (33 U.S.C. 1901-1911), or (3) regulations issued thereunder, such clearance or a permit to proceed shall be refused or revoked. Clearance or a permit to proceed may be granted when the district director is informed that a bond or other security satisfactory to the Coast Guard has been filed.

(b) If a district director receives a notification from a Coast Guard officer that an order has been issued to detain a vessel required to have an International Oil Pollution Prevention (IOPP) Certificate (1) which does not have a valid certificate on board, or (2) whose condition or whose equipment's condition does not substantially agree with the particulars of the certificate on board, or (3) which presents an unreasonable threat of harm to the marine environment, the district director shall refuse or revoke the clearance or permit to proceed of the vessel if requested to do so by a

Coast Guard officer. The district director shall not grant clearance or issue a permit to proceed to the vessel until notified by a Coast Guard officer that detention of the vessel is no longer required.

(c) If a district director receives a notification from a Coast Guard officer to detain a vessel operated under the authority of a country not a party to the MARPOL Protocol (1) which does not have a valid certificate on board showing that the vessel has been surveyed in accordance with and complies with the requirements of the MARPOL Protocol, or (2) whose condition or whose equipment's condition does not substantially agree with the particulars of the certificate on board, or (3) which presents an unreasonable threat of harm to the marine environment, the district director shall refuse or revoke the clearance or permit to proceed of the vessel if requested to do so by a Coast Guard officer. The district director shall not grant clearance or issue a permit to proceed to the vessel until notified by a Coast Guard officer that detention of the vessel is no longer required. (Pub. L. 96-748, 94 Stat. 2297 et seq., 33 U.S.C. 1901-1911; 46 U.S.C. 91, 46 U.S.C. 313; 19 U.S.C. 1443)

19 CFR Parts 4, 6, 10, 18, 19, 24, 101, 103, 141, 144, 148, and 177

(T.D. 84-149)

CONFORMING AMENDMENTS TO THE CUSTOMS REGULATIONS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: In accordance with Customs policy of periodically reviewing its regulations to ensure that they are current, this document makes certain conforming changes to the Customs Regulations which are necessary because of various executive, legislative, and administrative actions. The changes merely conform the regulations to existing law or practice. They are nonsubstantive and essentially are procedural.

EFFECTIVE DATE: July 16, 1984.

FOR FURTHER INFORMATION CONTACT: Marvin M. Amernick, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8237).

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of its program to keep its regulations current, the Customs Service has determined that various executive, legislative,

and administrative actions required conforming amendments to the Customs Regulations contained in Chapter 1, Title 19, Code of Federal Regulations (19 CFR Chapter 1). Following is a list of these actions, the affected sections of the regulations, and the necessary changes.

DISCUSSION OF CHANGES

1. The reorganization of the regional management structure of the Customs Service, as described in T.D. 82-118 published in the Federal Register on June 25, 1982 (47 FR 27655), necessitates amending sections 4.14 (c)(1) and (c)(2), regarding the locations of vessel repair liquidation units.

2. By T.D. 80-25, published in the Federal Register on January 18, 1980 (45 FR 3570), section 4.98(a) was amended to provide that a revised schedule of navigation fees to be charged and collected for specific services provided to vessels by Customs officers, will be published in the Federal Register and CUSTOMS BULLETIN in December of each year for the specified vessel services to be performed during the following year. Since the schedule of navigation fees may not necessarily change each year, Customs does not want to be bound to publish a notice in December of every year setting forth the navigation fee schedule, when no changes have occurred. The better approach is to publish a schedule only when revisions have been made so as to notify the public of these changes. This approach will be consistent with the approach used for publishing changes in container station fees as provided in section 19.40(b)(1), by T.D. 83-56, published in the Federal Register on March 9, 1983 (48 FR 9853). Therefore, section 4.98(a)(1), must be amended to reflect this change.

3. Part 19, relating to Customs warehouses, was substantially revised by T.D. 82-204, published in the Federal Register on November 1, 1982 (47 FR 49355). As part of this revision, information regarding the computation of Customs warehouse officer's fees, formerly contained in section 19.5(b), is now set forth in section 24.17(d). Accordingly, it is necessary to amend section 4.98(a)(2), relating to Customs fees, to remove the reference to section 19.5(b).

4. Section 6.2(b), relating to advance notice of the arrival of aircraft, must be amended to conform to an amendment to section 6.14, concerning the specific procedures for reporting the arrival of private aircraft from areas south of the United States, made by T.D. 83-192, published in the Federal Register on September 15, 1983 (48 FR 41381).

5. Sections 10.53(g)(1) and 10.53(g)(2), as amended by T.D. 82-148, published in the Federal Register on August 23, 1982 (47 FR 36630), relate to the importation of antique articles composed of any endangered or threatened species, such as scrimshaw. Scrimshaw is any art from which involves the etching or engraving or design upon, or the carving of figures, patterns, or designs from, any bone

or tooth of certain marine mammals, many of which have been determined to be endangered or threatened species. Congress subsequently enacted Pub. L. 97-304, 96 Stat. 1411, "The Endangered Species Act Amendments of 1982" on October 13, 1982, to "ensure that all Federal departments and agencies seek to conserve endangered and threatened species and utilize their authorities in furtherance of this purpose." Before Pub. L. 97-304, section 10.53(g)(1) stated that antique articles (other than scrimshaw) otherwise prohibited entry by the Endangered Species Act of 1973 (16 U.S.C. 1521, et seq.) may be entered if the article meets four requirements, one of which is that the article was made before 1830. Pub. L. 97-304 necessitates certain minor changes in sections 10.53(g)(1) and 10.53(g)(2) which include: (1) eliminating the scrimshaw exception noted above; (2) updating the condition that the article was made before 1830 by requiring that the article not be less than 100 years of age; and (3) deleting section 10.53(g)(2) which defines scrimshaw. Therefore, sections 10.53(g)(1) and 10.53(g)(2) must be amended to conform to Pub. L. 97-304.

6. Sections 10.53(h) and 10.53(i) relate to the additional duty imposed by item 766.30, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), which is applied to any article claimed to be an antique and therefore entered duty-free yet later found to be unauthentic with respect to the claimed antiquity. As set forth in sections 10.53 (h) and (i), the duty rate imposed by item 766.30, TSUS, for such an article, is 12.5 percent of 25 percent, depending upon the origin of the article. The duty rate has been revised to 9.6 percent of 25 percent, as appropriate, in addition to any other duty imposed on such an article under the Tariff Schedules. Accordingly, sections 10.53 (h) and 10.53(i) must be amended. However, rather than setting forth the revised additional duty and having to possibly amend the sections if the duty rate is further revised, sections 10.53 (h) and (i) are being amended by deleting all references to the duty rate and only referring to item 766.30, TSUS.

7. Section 10.92(a), regarding the filing of a bond at the time of making entry for consumption or withdrawal from a warehouse for consumption of wool or hair of the camel, must be amended to correct a reference to a particular Customs form. The second reference to Customs Form 7547 should be to Customs Form 7549.

8. Section 10.108(b), relating to entry of reimported articles exported under lease, must be amended to remove the reference to section 143.3, Customs Regulations. Section 143.3, which related to the release of merchandise, was deleted by T.D. 79-221, published in the Federal Register on August 9, 1979 (44 FR 46794). Section 10.108(b) should refer to section 141.66, Customs Regulations, relating to bonds for missing documents.

9. Section 10.135, relating to the entry of merchandise or withdrawal of merchandise from a warehouse for consumption without deposit of duty, cites section 8.28, Customs Regulations, for bond re-

quirements. In a revision to the regulations, Part 8, Customs Regulations, relating to liability for duties and entry of merchandise, was deleted by T.D. 73-175, published in the Federal Register on July 2, 1973 (38 FR 17443) and replaced by several other Parts. Therefore, section 10.135 must be amended by changing the citation for bond requirements from section 8.28 to section 142.4.

10. Section 18.1(a)(2), concerning merchandise to be transported from one port to another under cover of a TIR carnet, incorrectly refers to section 114.22(c)(3). There is no section 114.22(c)(3). The correct reference should be to section 114.22(d).

11. Section 19.5, regarding fees a warehouse proprietor will be charged to establish, alter, or relocate a warehouse facility, contains a reference to section 483a, Title 31, United States Code (31 U.S.C. 483a). Title 31, United States Code, was recently codified by Pub. L. 97-258, enacted on September 13, 1982, and section 483a (31 U.S.C. 483a) was redesignated as section 9701 (31 U.S.C. 9701). Therefore, section 19.5 must be amended to reflect this change.

12. Section 19.6(d)(2), relating to form distribution procedures concerning blanket withdrawals from warehouses, contains an incorrect reference to subparagraph (e) of that section. The reference should be to subparagraph (3) of that section.

13. The authority paragraph in Part 24, relating to Customs financial and accounting procedure, cites 31 U.S.C. 483a. Due to the recent codification of Title 31, explained above in item 11, the authority paragraph in Part 24 must be amended to change the cite to 31 U.S.C. 9701.

14. Section 101.3(b), which lists Customs regions, districts, and ports of entry, contains an incorrect reference to T.D. 53876 in the listing for "New York, N.Y.". The Treasury Decision (T.D.) that extended the limits of the New York, N.Y., port of entry was T.D. 40809. Section 101.3(b) must be amended to correct this reference.

15. Section 101.5, which lists Customs preclearance offices in foreign countries, must be amended to reflect changes regarding the Customs officer having supervision over Winnipeg, Manitoba, and Vancouver, British Columbia. Due to a recent organizational change, Winnipeg is under the supervision of the District Director of Customs, Pembina, North Dakota, and Vancouver is under the supervision of the District Director of Customs, Great Falls, Montana.

16. Sections 103.10(g)(1), 103.10(g)(2), and 103.10(g)(3), regarding the fees charged the public for services performed by Customs officers and employees such as document duplication and information searches, must be amended to conform with corresponding sections of the Department of the Treasury regulations which were amended by a document published in the Federal Register on March 24, 1983 (48 FR 12350). Specifically, these changes include the following: (1) increasing the charge for photocopies per page up to 8½" x 14" from \$0.10 to \$0.15 each; (2) increasing the charge for

services of personnel involved in searching for and locating records from \$5.00 to \$10.00 for each hour or fraction thereof; and (3) increasing the charge for personnel time associated with a computer search from \$5.00 to \$10.00.

17. Section 141.89 contains several paragraphs concerning the invoice requirement for additional information relating to sugar. Customs has determined that this information is no longer needed. Therefore, section 141.89 is being amended to delete the requirement.

18. Section 144.1(a), relating to types of merchandise eligible for warehousing, states that any merchandise may be entered for warehouse except for perishable merchandise, explosive substances (other than firecrackers), and unconditionally free merchandise. Customs has determined that section 144.1(a) must be amended to: (1) eliminate the exception made for unconditionally free merchandise so as to allow unconditionally duty-free merchandise to be entered for warehouse; and (2) restrict the coverage of the regulation to "any merchandise subject to duty" so as to avoid an implication that domestic or duty-paid merchandise may be entered into or placed in a bonded warehouse.

19. Section 148.23(c)(2)(i) discusses the examination and clearance of baggage of any person arriving in the United States and cites section 8.15, Customs Regulations, for information regarding whether invoices are required in certain situations. Part 8 was deleted by T.D. 73-175, as explained in item 9 above, and therefore section 148.23(c)(2)(i) must be amended by changing the citation regarding invoices from section 8.15 to section 141.83.

20. Section 148.64(b)(1) discusses the administrative exemption allowed from the payment of duty by crewmembers arriving in the United States. The exemption limit of \$25, as listed in the pamphlet, "U.S. Customs Pocket Hints", has been in effect since October 3, 1978. However, section 148.64(b)(1) was never revised and the exemption limit is incorrectly listed at \$10. Therefore, section 148.64(b)(1) must be amended to reflect the correct administrative exemption of \$25.

21. Section 177.2(b)(2)(ii)(B) relates to the submission of tariff classification ruling requests to the Regional Commissioner, Region II. This section contains a citation to section 14.3(g)(1), Customs Manual ("difference cases"). However, section 14.3 Customs Manual was superseded by Manual Supplement 2126-01, dated June 8, 1981, which contains the current instructions and procedures pertaining to the resolution of "difference cases". Therefore, section 177.2(b)(2)(ii)(B) must be amended by updating the citation to reflect the revision.

22. The Customs Regional offices are now referred to by their location rather than number. Accordingly, the references to "Region II" in Part 177 are being changed to either "New York" or "the New York region".

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE PROVISIONS

Inasmuch as these amendments merely conform the Customs Regulations to existing law or practice, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

EXECUTIVE ORDER 12291

Because this document will not result in a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory analysis and review prescribed by section 3 of the E.O. is not required.

INAPPLICABILITY OF REGULATORY FLEXIBILITY ACT

This document is not subject to the provisions of sections 603 and 604 of Title 5, United States Code, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act". That Act does not apply to any regulation, such as this, for which a notice of proposed rule-making is not required by the Administrative Procedure Act (5 U.S.C. 551, et seq.) or any other statute.

DRAFTING INFORMATION

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS

- 19 CFR Part 4
 - Vessels, Cargo vessels.
- 19 CFR Part 6
 - Air carriers, Air transportation, Aircraft, Airports.
- 19 CFR Part 10
 - Art, Exports, Wildlife.
- 19 CFR Part 18
 - Common carriers, Freight forwarders, Railroads, Surety bonds.
- 19 CFR Part 19
 - Warehouse.
- 19 CFR Part 24
 - Accounting.
- 19 CFR Part 101
 - Harbors, Organizations and functions (Government agencies).
- 19 CFR Part 103
 - Administrative practice and procedure, Freedom of Information, Information.
- 19 CFR Part 141
 - Imports.

19 CFR Part 144

Warehouses.

19 CFR Part 148

Seamen.

19 CFR Part 177

Administrative practice and procedure.

AMENDMENTS TO THE REGULATIONS

Parts 4, 6, 10, 18, 19, 24, 101, 103, 141, 144, 148, and 177, Customs Regulations (19 CFR Parts 4, 6, 10, 18, 19, 24, 101, 103, 141, 144, 148, 177), are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. Section 4.14(c)(1) is revised to read as follows:

§ 4.14 Foreign equipment purchases by, and repairs to, American vessels.

(c) *Remission or refund of duty.*—(1) *Vessel repair liquidation units.* Vessel repair liquidation units under the supervision of the Regional Commissioner of Customs are established at New York, New York (New York Region); New Orleans, Louisiana (South Central Region); and San Francisco, California (Pacific Region). The New York Region unit shall process and liquidate each vessel repair entry filed at ports in the Northeast, New York, and the North Central Regions. The South Central Region unit shall process and liquidate each vessel repair entry filed at ports in the Southeast, the South Central, and the Southwest Regions. The Pacific Region unit shall process and liquidate each vessel repair entry filed at ports in the Pacific Region. After processing and liquidation of the entries, the bulletin notices of liquidation shall be returned to the respective ports of entry for posting.

2. Section 4.14(c)(2) is amended by removing the words "Regions II, V, and VIII" and inserting, in their place, the words "the New York, South Central, and Pacific Regions".

3. The first sentence of section 4.98(a)(1) is amended by removing the words "in December of each year, beginning in December 1980" and inserting, in their place, the word "periodically".

4. Section 4.98(a)(1) is further amended by deleting the sentence "The published revised fee schedule shall remain in effect throughout the following year." and inserting, in its place, the sentence "The published revised fee schedule shall remain in effect until changed."

5. Section 4.98(a)(2) is amended by removing the words "§§ 19.5(b) and 24.17(d), Customs Regulations (19 CFR 19.5(b), 24.17(d))," and inserting, in their place, the words "§ 24.17(d) Customs Regulations (19 CFR 24.17(d)),".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)).

PART 6—AIR COMMERCE REGULATIONS

Section 6.2(b)(1) is revised to read as follows:

§ 6.2 Landing requirements.

(b) *Advance notice of arrival*—(1) *Applicability*.

All aircraft, except as provided in paragraph (b)(3) of this section, before coming into any area from any place outside the United States, for security reasons, and in order to avoid the penalties provided for in § 6.11, shall furnish a timely notice of intended arrival, either by or at the request of the commander of the aircraft, through the Federal Aviation Administration flight notification procedures or directly to the district director or other Customs officer in charge at the nearest intended place of first landing in such area. That officer shall notify the officers in charge of the other Government services. In the case of private aircraft arriving from areas south of the United States as specified in § 6.14 (a) and (b), advance notice shall be furnished in accordance with the procedure prescribed in § 6.14

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)).

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. Section 10.53(g) is revised to read as follows:

§ 10.53 Antiques.

(g) Antique articles otherwise prohibited entry by the Endangered Species Act of 1973 (16 U.S.C. 1521, *et seq.*) may be entered if:

(1) The article is composed in whole or in part of any endangered or threatened species listed in 50 CFR 17.11 or 17.12,

(2) The article is not less than 100 years of age;

(3) The article has not been repaired or modified with any part of any such endangered or threatened species, on or after December 28, 1973,

(4) The article is entered at a port designated in § 12.26 of this chapter,

(5) A Declaration for Importation or Exportation of Fish or Wildlife (USFWS Form 3-177) is filed at the time of entry with the district director of Customs who will forward the form to the U.S. Fish and Wildlife Service, and

(6) The importer meets the requirements of paragraphs (a), (b), and (c) of this section.

2. Section 10.53(h) is amended by removing the words "of 12.5 percent or 25 percent, as appropriate".

3. Section 10.53(i) is amended by removing the words "12.5 percent or 25 percent, as appropriate".

4. Section 10.92(a) is amended by removing the second reference to "Customs Form 7547" and inserting, in its place, "Customs Form 7549".

5. Section 10.108(b) is amended by removing "143.3" and inserting, in its place, "141.66".

6. Section 10.135 is amended by removing "8.28" and inserting, in its place, "142.4".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)).

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

Section 18.1(a)(2) is amended by removing "§ 114.22(c)(3)" and inserting, in its place, "§ 114.22(d)".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)).

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. Section 19.5 is amended by removing "31 U.S.C. 483a" and inserting, in its place, "31 U.S.C. 9701".

2. Section 19.6(d)(2) is amended by removing "subparagraph (e)" and inserting, in its place, "subparagraph (3)".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)).

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

The authority paragraph set forth in the beginning of Part 24 is amended by removing "31 U.S.C. 483a" and inserting, in its place, "31 U.S.C. 9701".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)).

PART 101—GENERAL PROVISIONS

1. In the list of Customs regions, districts, and ports in section 101.3(b), the listing for "New York, N.Y.," under the column headed "Ports of entry" is amended by removing "(T.D. 53876)" and inserting, in its place, "(T.D. 40809)".

2. In the list of Customs preclearance offices in foreign countries in section 101.5, the listing for Vancouver, British Columbia, under the column headed "Customs officer having supervision", is amended by removing "District Director, Seattle, Wash." and inserting, in its place, "District Director, Great Falls, Mont.".

3. In the list of Customs preclearance offices in foreign countries in section 101.5, the listing for Winnipeg, Manitoba, under the column heading "Customs officer having supervision," is amended

by removing "Regional Commissioner, Chicago, Ill.," and inserting, in its place, "District Director, Pembina, N.D.".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)).

PART 103—AVAILABILITY OF INFORMATION

1. Section 103.10(g)(1)-(4) is revised to read as follows:

§ 103.10 Fees for services.

(g) *Amount to be charged for specified services.*

(1) *Duplication.* (i) The charge for photocopies per page up to 8½" x 14" is at the rate of \$0.15 each.

(ii) The charge for photographs, films and other materials is their actual cost. The Customs Service may furnish the records to be released to a private contractor for copying and charge the person requesting the records the actual cost of duplication charged by the private contractor. No fee is charged where the requester furnishes the supplies and equipment and makes the copies at the Government location.

(2) *Unpriced printed materials.* The charge for unpriced printed material, which is available at the location where requested and which does not require duplication for copies to be furnished, is at the rate of \$0.25 for each twenty-five pages or fraction thereof.

(3) *Search services.* The charge for services of personnel involved in locating records is \$10.00 for each hour or fraction thereof. If a computer search is required because of the nature of the records sought and the manner in which the records are stored, the fee is \$10.00 for each hour or fraction thereof of personnel time associated with the search plus the actual cost of extracting the stored information in the format in which it is normally produced. This actual cost of extracting information is based on computer time and supplies necessary to comply with the request.

(4) *Searches requiring travel or transportation.* The charge for transporting a record from one location to another, or for transporting a Customs officer or employee to the site of requested records when it is necessary to locate rather than examine the records, is the actual cost of the transportation.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)).

PART 141—ENTRY OF MERCHANDISE

1. The alphabetical list in section 141.89(a) of classes of merchandise (for which additional information is required on invoices) is amended by deleting all information relating to "Sugar" set forth between "Screenings or scalplings of grains or seeds" and "Textile fiber products".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)).

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

The first sentence of section 144.1(a) is revised to read as follows:

§ 144.1 Merchandise eligible for warehousing.

(a) *Types of merchandise.* Any merchandise subject to duty may be entered for warehousing except for perishable merchandise and explosive substances (other than firecrackers).

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)).

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. Section 148.23(c)(2)(i) is amended by removing “§ 8.15” and inserting, in its place, “§141.83”.

2. Section 148.64(b)(1) is amended by removing “\$10” and inserting, in its place, “\$25”.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)).

PART 177—ADMINISTRATIVE RULINGS

1. The first sentence of section 177.0 is amended by removing the words “Region II, New York (“Regional Commissioner, Region II”).” and inserting in their place, the words “New York Region.”

2. Section 177.2(b)(2)(ii)(B) is revised to read as follows:

§ 177.2 Submission of ruling requests.

(b)(2)(ii) * * *

(B) Ruling letters issued by the Regional Commissioner, New York Region, are limited to prospective transactions. The Regional Commissioner, New York Region, shall not prepare final decisions under § 177.11 (Requests for Advice by Field Offices), § 174.23 (Further Review of Protests), § 177.10 (Change of Practice), 19 U.S.C. 1516 (petitions under section 516, Tariff Act of 1930), or Policies and Procedures Manual Supplement 2126-01.

3. The second sentence of section 177.4(b) is amended by removing the words “Region II, New York.” and inserting, in their place, the words “the New York Region.”

4. Part 177 is amended by removing the words “Region II” and inserting, in their place, the words “New York Region” in the following places:

a. The second reference to “Region II” in the first sentence of section 177.0;

b. The second sentence of section 177.1(a)(1);

c. The third sentence of section 177.1(b);

d. The first sentence of section 177.1(d)(1);

e. The first sentence of section 177.1(d)(2);

- f. The fourth sentence of section 177.2(a);
- g. The second sentence of section 177.2(b)(2)(ii)(C);
- h. The first sentence of section 177.2(d);
- i. The second sentence of section 177.5;
- j. The first sentence of section 177.8(a)(1);
- k. The first sentence of section 177.8(a)(2);
- l. The fourth sentence of section 177.8(a)(3);
- m. The first sentence of section 177.9(a);
- n. The unnumbered paragraph following section 177.9(d)(2)(v);
- o. The first sentence of section 177.11(b)(1)(i).

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)).

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: July 2, 1984.

EDWARD T. STEVENSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, July 16, 1984 (49 FR 28695)]

U.S. Customs Service

Proposed Rulemaking

19 CFR Parts 18, 24, 112, 141, 144, 146, and 191

Foreign-Trade Zones; Proposed Specialized and General Provisions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed revision.

SUMMARY: This proposed revision of the Customs Regulations relating to foreign-trade zones is undertaken essentially to incorporate a new audit-inspection method of zone supervision by Customs into those regulations. A foreign-trade zone is a defined area, considered to be outside the customs territory of the United States, where certain lawful activities can be conducted with a minimum of formalities. A zone provides a site at or adjacent to a Customs port of entry where operations involving foreign merchandise can take place which otherwise might have been done abroad for tariff and trade reasons. The proposed revision sets forth the general provisions applicable to the administration of all zones and other specialized provisions applicable to subzones and noncontiguous zone sites. In addition, changes in the language of the regulations are proposed to clarify some provisions, eliminate inconsistencies, and conform the Customs Regulations to current administrative practice.

DATE: Comments must be received on or before (90 days from date of publication in the Federal Register).

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229. Comments relating to the information collection aspects of the proposal should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for the U.S. Customs Service, as well as to the Commissioner of Customs, as noted above.

FOR FURTHER INFORMATION CONTACT:

General operational aspects: John Holl or Louis Razzino (202-566-8151).

Inventory control and recordkeeping system aspect: Marcus Sircus (202-566-2812).

Appraisal and valuation aspect: Myles Flynn (202-566-5307).

Liquidated damages, penalty and suspension aspect: William Lawlor (202-566-5856).

Economic aspect: Daniel Norman (202-566-5307).

All of the above Customs personnel are located at: U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Although free trade is an ancient concept, free trade zones did not develop until the 19th century. The success of free trade zones in northern Europe, notably the "free port" of Hamburg, stimulated American interest in the concept and in establishing free trade zones.

In 1934, Congress enacted the Foreign-Trade Zones Act "to expedite and encourage foreign commerce." The Act created domestic "foreign-trade zones", and was designed to stimulate international trade and create jobs in the United States. At that time, zones were envisioned as storage, manipulation, and transshipment (exportation) centers. In 1950, an amendment to the Act was passed authorizing manufacturing and exhibition inside zones.

Foreign-trade zones (zones) are areas within the United States (but outside of the "Customs territory" of the United States, as defined in section 146.1, Customs Regulations (19 CFR 146.1)), where foreign or domestic merchandise may be brought for manipulation, manufacture, assembly or other processing, or for storage or exhibition, provided that these operations are not otherwise prohibited by law. Foreign merchandise may be brought into a zone without being subject to the usual Customs entry procedures and payment of duty. Foreign or domestic merchandise may be exported or entered into the Customs territory from a zone. Quota restrictions do not normally apply to foreign merchandise in a zone. Merchandise moved to a zone for export may be considered exported upon its admission to a zone for purposes of excise tax rebates and drawback.

Zones are established under the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a-81u), and the general regulations and rules of procedure of the Foreign-Trade Zones Board (the Board), Department of Commerce (15 CFR Part 400). Part 146, Customs Regulations (19 CFR Part 146), governs the admission of merchandise into a zone; the manipulation, manufacture, or exhibition in a zone; the exportation of merchandise from a zone; and the transfer of merchandise from a zone into the Customs territory.

Typically, a foreign-trade zone is a fenced-in area with a general warehouse type building or buildings and access to all modes of transportation. Space is available for leasing to firms for authorized zone activity. Some zones have industrial park characteristics or are located within such facilities and have lots on which zone users can construct their own facilities. Subzones are sites authorized by the board through zone grantees for operations by individual firms when zone procedures are vital for an operation that is in the public interest but cannot be accommodated within an existing zone.

Between 1934 and 1970, just 12 zones were approved by the Board. At this time, there are 97 zones approved, of which 56 are in operation. In addition, there are about 30 subzones approved, of which 24 are in operation. There are pending with the Board at least 12 applications for zone approval. It has been estimated that the volume of business in zones has multiplied 50 times during the decade 1970-1980, with zones now handling about \$3.5 billion worth of merchandise each year.

As can be appreciated from the foregoing, the number of zones and the operations conducted therein have increased tremendously in recent years. Historically, Customs has administered zones and their operations by the physical presence of Customs officers at the various zone locations. However, as time has passed, Customs staffing available to supervise zones has declined while zones have continued to proliferate. This has resulted in delays in the approval or activation of a given zone, and has presented problems for Customs in the exercise of effective control over some zone operations, especially subzone manufacturing activities. Therefore, Customs undertook an effort to devise a method to reduce Customs staffing requirements in zones and other areas (notably bonded warehouses) without endangering the revenue or law enforcement priorities, while also not hampering the growth of those areas and not impeding commerce.

The "audit-inspection" program approach to administration of those areas of Customs responsibility, which de-emphasizes the physical presence of a Customs officer to supervise each transaction, was successfully implemented in regard to the operation of bonded warehouses (see Treasury Decision 82-204, published in the Federal Register on November 1, 1982 (47 49355)). This notice proposes to extend the audit-inspection program, by regulation, to zones as a method of reducing Customs staffing commitment to those operations. The audit-inspection method no longer requires a Customs officer to be physically present to supervise the admission of merchandise into or removal of merchandise from a zone. The zone operator, on the other hand, has increased responsibilities for supervision, recordkeeping and other responsibilities under its bond, and must pay an activation and annual reimbursement fee. Customs will verify operator compliance with regulatory and other

requirements through selective merchandise examination, and other spot checks and audits. It should be noted that Customs initiated use of the audit-inspection method in August 1983, on the basis of voluntary agreements between Customs and zone operators. At present, four subzones and one general-purpose zone have entered into voluntary agreements to use the audit-inspection method to administer their operations. Customs has endeavored to take that limited experience under the audit-inspection method applied to zones into account in preparing this revision.

This proposed revision is part of the on-going general revision of the Customs Regulations and would amend Chapter I, title 19, Code of Federal Regulations, by removing the text of present Part 146 and adding a new Part 146.

Proposed Part 146 sets forth the general regulatory provisions applicable to the administration of foreign-trade zones. Substantive changes have been made in proposed Part 146. That Part will follow the same basic format as the current Part 146, but will contain changes in or additions to language to clarify the current provisions that have been retained in the revision.

Proposed (revised) Part 146 is divided into seven subparts. Following is a summary discussion of the major new changes in each of those subparts.

A general point needs to be made here; that wherever the word "days" appears in this revision, it means calendar days, unless "working days" is specified.

SUBPART A—GENERAL PROVISIONS

1. Proposed section 146.1 defines the primary terms used throughout the revision. Some of the terms are new and some follow the definitions contained in a notice of proposed rulemaking on zones issued by the Foreign-Trade Zones Board, and published in the Federal Register on February 18, 1983 (48 FR 7188). They are:

- a. Activation.
- b. Alteration.
- c. Deactivation.
- d. Conditionally admissible merchandise.
- e. Prohibited article.
- f. Operator.
- g. Reactivation.
- h. Subzone.

2. Proposed section 146.3(b) states the scope of Customs supervision exercised at a zone. That supervision *may* be physical, at the discretion of the district director. However, normal Customs supervision is envisioned to involve selective merchandise examination, other spot checks and audits.

3. Proposed section 146.4 describes the increased supervisory responsibilities of the operator over zone merchandise and for record-

keeping. That section also allows the operator to provide, or contract for, private guard service to protect the revenue.

4. Proposed section 146.5 provides that the operator or grantee of a zone will be charged a nonrefundable fee for activation of a zone or any portion thereof, or to alter or relocate a zone. Moreover, the operator of a zone will be charged a nonrefundable annual fee for each activated zone as payment for the cost of additional Customs service required by law. The fee schedule would be revised annually and published in the Customs Bulletin and the Federal Register. Examples of fees established for 1983 and 1984 under the voluntary audit-inspection program are:

Activation

1. General-Purpose Zone—\$1,020.

2. Subzone or noncontiguous zone site—\$1,960. Alteration—\$360 per site.

Annual

1. Small zone (under \$10 million volume)—\$2,600.

2. Large zone (under \$10 million volume)—\$7,600.

A special fee for certain large subzones is tailored to each according to its size and other characteristics. Examples of the calculation of activation and alteration fees, and annual fees are included in this document as Appendices A and B, respectively. Those examples are taken from guidelines prepared by Customs as part of the voluntary audit-inspection program method and the acceptance by operators of the agreements corresponding to that program.

5. Proposed section 146.6 establishes the procedure for activation of a zone, including the required application, and actual activation.

6. Proposed section 146.7 describes the procedures to be followed when the following zone changes occur:

a. Boundary modification.

b. Alteration of an activated area.

c. Deactivation or reactivation.

d. Suspension of all or part of an activated area.

e. New bond required by district director.

f. New operator.

g. Demand by district director for list of zone officers, employees, and other persons.

7. Proposed section 146.8 authorizes the operator to affix or break a Customs seal on a vehicle or container arriving at or leaving a zone. That section also obligates the operator to notify the district director of any broken, missing, or improperly affixed seal.

8. Proposed section 146.9 allows the operator to grant permission for zone operations, rather than the grantee. This conforms the regulations to current practice.

9. Proposed section 146.13 establishes the procedure necessary for an operator of a subzone or a noncontiguous zone site to follow if that operator wants to (1) self-verify the quantity of merchandise admitted to the zone, and (2) accept responsibility for supervision of

removal of zone merchandise on entries for consumption, transportation, or transportation and exportation. This section details the application procedure, including the criteria the district director will consider before a decision on the operator's application. As this section qualifies an operator to use maximum flexibility and independence in its activities, and is cross-referenced to other proposed sections which offer radical departures from current zone administration, it is recommended for especially close consideration by commenters.

10. Proposed section 146.14 states the conditions necessary to be met before certain domestic status merchandise may be admitted to a zone without prior application and permit for each shipment.

11. Proposed section 146.15 describes the procedure to be followed when merchandise from a subzone more than 35 miles from the limits of an adjacent port of entry is to be admitted to or removed from the subzone. Liquidated damages are prescribed for losses.

12. Proposed section 146.16 allows an operator to apply to the district director for permission to have zone merchandise examined not at the zone, but at another place within the limits of the port where the zone is located.

13. Proposed section 146.17 specifies that records required by this revision be retained at the zone for at least 5 years after the date of entry of the subject merchandise that is removed from the zone.

SUBPART B—INVENTORY CONTROL AND RECORDKEEPING SYSTEM

This proposed subpart is entirely new. It is essential to the audit-inspection method of zone supervision, and given the greatly increased operator responsibility for recordkeeping, it should be carefully studied by commenters.

1. Proposed section 146.21 sets forth the general requirements for an inventory control and recordkeeping system, including the system capability, procedures manual, and the responsibility of the operator to ensure that its system meets regulatory requirements. Customs *will not* approve or disapprove a system.

2. Proposed section 146.22 provides the system requirements for admission of merchandise to a zone.

3. Proposed section 146.23 provides the system requirements for basic accountability of merchandise in a zone.

4. Proposed section 146.24 provides the system requirements for removal of merchandise from a zone.

5. Proposed section 146.25 provides the requirement for an annual reconciliation prepared by the operator along with its certification that the reconciliation is accurate, and available for review by Customs.

6. Proposed section 146.26 states the operator's obligation to perform an annual internal review of its system and to notify Customs of any deficiency discovered and corrective action taken.

SUBPART C—ADMISSION OF MERCHANDISE TO A ZONE

1. Proposed section 146.31 describes merchandise permitted in a zone, and differentiates between a prohibited article (not permitted) and conditionally admissible merchandise (permitted under condition).

2. Proposed section 146.32(b)(1) requires among the supporting documents to be filed with an application for admission of merchandise to a zone, the operator shall submit two copies of an invoice or similar commercial document.

3. Proposed section 146.32(b)(5) authorizes the district director to require any additional information or documentation needed to conduct an examination of merchandise to be admitted, or to determine the admissibility of that merchandise.

4. Proposed section 146.32(c)(3) states that one of the conditions for issuance of a permit for admission of merchandise to a zone is that the merchandise be retained for examination at the place of unloading, the zone, or other place designated by the district director, except where direct delivery to a subzone or zone site is authorized.

5. Proposed section 146.32(d) provides for a blanket application for admission of merchandise to a zone (rather than a separate application of each admission), when certain specified criteria are met.

6. Proposed section 146.35 allows for the temporary deposit of merchandise in a zone for 5 working days, upon approval of an application by the district director, when documentation is incomplete. However, certain conditions specified in that section must be met, and the operator must submit complete documentation to Customs within the 5-working day period of temporary deposit.

7. Proposed section 146.36 reserves to Customs the right to examine any merchandise at the place of unloading, the zone, or other place designated by the district director. However, the section also states that the district director may authorize release of the merchandise without examination.

8. Proposed section 146.37 describes the responsibility of the operator for the maintenance of admission documentation, its liability for the receipt of merchandise, and its duty to supervise the receipt of merchandise into the zone (when authorized by the district director).

9. Proposed section 146.38 provides that Customs will now authorize for delivery of merchandise in lieu of certifying arrival of merchandise at a zone.

10. Proposed section 146.39 states that once the district director has approved a blanket application for the admission of certain domestic status merchandise, no other application for admission of that merchandise will be accepted. For domestic status merchandise not covered by an approved application for blanket admission,

an application for each admission will be required on Customs Form 214.

11. Proposed section 146.40 sets forth the special procedures for admission of merchandise to a subzone or noncontiguous zone site. The district director may allow the direct delivery of merchandise without prior application or approval of Customs Form 214 and without Customs examination, if the operator qualifies under proposed section 146.13. The operator handles the arrival of the merchandise on the conveyance, completing the documentation formalities and notifying the district director of any irregularities. The operator has its option of filing either a cumulative Customs Form 214 for merchandise received each business day, or an individual Customs Form 214 for each shipment received on a given business day. Merchandise which arrives at a subzone or zone site must be formally admitted within 5 working days or it will be sent to general order, unless the district director grants an extension of that time period or the operator enters the merchandise and removes it from the premises. In addition, the operator generally assumes responsibility for the manifested quantity of merchandise, and must maintain an in-bond manifest file of incomplete shipments as well as a continuing in-put quality control program for its inventory and recordkeeping system.

SUBPART D—STATUS OF MERCHANDISE IN A ZONE

The major new change of substance in this revised subpart is that a Customs Form 7502 will no longer be required to be filed on election of privileged foreign status for merchandise. There also has been a change in organization to include the concept of what previously was separately designated "privileged domestic merchandise," in proposed section 146.43 that is now entitled only "Domestic merchandise."

SUBPART E—HANDLING OF MERCHANDISE IN A ZONE

1. Proposed section 146.52(a)(2) provides for the approval by the district director of a blanket application for a continuous or repetitive manipulation, manufacture, or exhibition for a period up to one year.

2. Proposed section 146.52(d)(2) provides that in lieu of the approved Customs Form 216 for manipulation or manufacture of merchandise, an operator may be granted approval of a blanket application and must maintain a record in its inventory control and recordkeeping system which provides an audit trail of the merchandise under blanket approval through the approved operation.

3. Proposed section 146.53(c) requires that the operator shall certify a destruction of zone merchandise on Customs Form 216, and also maintain the report in its inventory control and recordkeeping system.

4. Proposed section 146.54 states explicitly that it is the operator that is responsible for the security of merchandise in a zone (including storage and handling), and for the maintenance of records pertaining to that merchandise.

5. Proposed section 146.55 relates to a shortage or overage of merchandise in a zone, and damage to merchandise in a zone. Much of the material in the section is new, specifically:

a. A report by the operator to the district director is required in the case of thefts or excess merchandise discovered in a zone;

b. The operator must record all shortages, overages, and damage, in its inventory control and recordkeeping system;

c. The liability of the operator under its bond for the shortages of merchandise, and liability for duty and taxes;

d. The treatment of merchandise that is considered an overage; and

e. The adjustment of the operator's liability under its bond for damage to merchandise.

SUBPART F—REMOVAL OF MERCHANDISE FROM A ZONE

1. Proposed section 146.61 provides that merchandise may be considered constructively transferred to Customs territory without the necessity to file a Customs Form 215, but upon presentation of any entry document.

2. Proposed section 146.62, "Right to make entry," takes its content from the definition of who may make entry contained in Public Law 97-446.

3. Proposed section 146.63(b)(2) provides that when an entry for consumption is made for merchandise to be removed from a subzone or noncontiguous zone site approved under proposed section 146.13, the district director may allow the importer to file an entry on Customs Form 3461 for the *estimated* removal of merchandise during the calendar week. The entry must be accompanied by a *pro forma* invoice covering the merchandise to be removed during the week and its value. If the merchandise actually removed exceeds the estimate, a supplemental entry must be filed to cover the additional merchandise *before* its removal from the subzone or zone site.

4. Proposed section 146.63(c) specifies that either a daily entry summary or, in the case of a subzone or noncontiguous zone site approved under proposed section 146.13, a weekly entry summary, may be filed for merchandise removed from a zone.

5. Proposed section 146.63(d) provides that except for a statement of the quantity, zone status and value, and dutiable value of merchandise covered by an entry summary, the district director may waive presentation of an invoice and supporting documentation with the entry or entry summary.

6. Proposed section 146.64(c) specifies that an entry of zone merchandise for warehouse must be made within the time limit provided for in 19 U.S.C. 1557(a), *i.e.*, five years from date of importation.

7. Proposed section 146.65(a) provides that Customs may examine any merchandise on its removal from a zone. The section also states that all requirements and restrictions applicable to imported merchandise may also apply to merchandise constructively transferred to Customs territory from a zone.

8. Proposed section 146.64(b) allows for the classification of foreign merchandise at the time of the filing of an entry or entry summary with Customs.

9. Proposed section 146.65(c)(2) provides for the determination of the dutiable value of merchandise removed from a zone, reflecting the cost or value of components having a foreign status, exclusive of any costs of processing or fabrication in the zone.

10. Proposed section 146.66 states the documentation requirements for entry of merchandise for transportation to another port.

11. Proposed section 146.67(b)(1) states the procedure to be followed when zone merchandise (other than domestic status merchandise) is transferred from one zone to another at the same port.

12. Proposed section 146.67(d) describes the procedure to be followed when zone merchandise (other than domestic status merchandise) arrives at the destination zone at the same or at another port.

13. Proposed section 146.69 sets forth the procedures applicable to merchandise removed from a subzone or noncontiguous zone site for transportation or exportation. The district director may allow a person with the right to make entry to file an application for a weekly permit to enter and release merchandise during a calendar week. The application must be accompanied by *pro forma* invoice or other satisfactory documentation. After approval, that person would be able to execute individual entries for merchandise covered by the weekly permit. However, the person with the right to make entry must file shortly thereafter with the district director a statement of all merchandise entered under the approved weekly permit.

14. Proposed section 146.71(c) provides that zone-restricted merchandise may be returned to Customs territory for warehousing in accordance with Treasury Decision 83-139, published in the Federal Register on June 16, 1983 (48 FR 27536).

15. Proposed section 146.72(c) states that domestic status merchandise may be transferred into the Customs territory by means of a blanket submission prepared by the operator and filed with Customs on the next working day after that merchandise was removed from the zone. It is also noted in the section that certain domestic status merchandise admitted to a zone under the procedure described in proposed section 146.14 may be removed from a zone without Customs permit.

16. Proposed section 146.73 governs the general release and removal of merchandise from a zone. As a normal rule, no merchandise may be removed from a zone without a Customs permit on the appropriate entry or withdrawal form or other required document. In general, the operator will be held liable, absent an adjustment, for the quantity of merchandise in a zone shown on the entry, withdrawal or other document. The operator will be relieved of responsibility for the merchandise on receipt of the removal document signed by the carrier or importer. Merchandise for which a Customs permit has been issued must be segregated from other zone merchandise, not further manipulated or manufactured, and must be removed from the zone premises within 5 working days after the permit is issued. Of special note is a provision in this section (paragraph (d)(i)) which allows merchandise entered for consumption (and duty paid) to remain in the zone with the permission of the district director, subject to certain detailed conditions (*e.g.*, no further processing). Furthermore, paragraph (d)(2) allows the restoration to former zone status of a component of merchandise entered because of clerical error, mistake of fact, or other inadvertance not amounting to an error in the construction of the law. If the district director decides that there has been no error, *etc.*, then the component will be treated as an overage. Paragraph (d) of proposed section 146.72 was drafted to remedy certain problems encountered in administration of manufacturing subzones, and should be carefully studied by commenters.

SUBPART G—LIQUIDATED DAMAGES; PENALTIES; SUSPENSION; REVOCATION

This subpart is entirely new.

1. Proposed section 146.81 sets forth the operator's liability under its bond for liquidated damages for defaults involving certain merchandise (three times the value of the merchandise) or any of the terms and conditions of that bond (\$200 maximum for each default). In addition, that section provides for the imposition of liquidated damages for a default by the principal in respect to tardy payment of the annual fee.

2. Proposed section 146.82 provides for a fine of \$1,000 for each violation of the Foreign-Trade Zones Act of 1934, as amended (Act), or any regulations issued thereunder. Each day a violation continues will constitute a separate offense. Any penalty assessed may be augmented by applicable liquidated damages. All fines imposed by the district director will be reviewed at Customs Headquarters.

3. Proposed section 146.83 provides for the suspension by the district director, for cause enumerated in that section, of the activated status of a zone or zone site, for a period generally not to exceed 30 days. Prior to the suspension a notice and hearing procedure set forth in the section must be followed. The regional commissioner of

the region in which the zone is located is charged with making the final Customs administrative decision in the matter.

4. Proposed section 146.84 provides for a recommendation by the district director to the Foreign-Trade Zones Board that the zone or subzone grant be revoked by the Board for willful and repeated violations of the Act. A recommendation for grant revocation may be made in addition to any applicable liquidated damages, penalty, or suspension of activation for cause.

EDITORIAL AND CONFORMING CHANGES

Throughout the revision, numerous editorial changes have been made to clarify and simplify the language contained in the foreign-trade zone regulations. Furthermore, changes in other parts of the Customs Regulations have been proposed to conform them to the proposed revision of Part 146.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments, preferably in triplicate, that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, DC 20229.

EXECUTIVE ORDER 12291

The proposed regulation is not a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604), are applicable to this proposal. Accordingly, an initial regulatory flexibility analysis prepared by Customs is attached to this document as Appendix C. Comments on the analysis are also solicited and should accompany comments submitted on the proposal.

PAPERWORK REDUCTION ACT

The proposed regulation is subject to the Paperwork Reduction Act of 1980, Pub. L. 96-511 (44 U.S.C. 3504(h)). Accordingly, applicable sections of this document have been submitted to the Office of Management and Budget. Comments on the collection of information requirements contained in this document should be directed to the Office of Information & Regulatory Affairs, OMB, Washington, DC 20503, ATTN: Desk Officer for the U.S. Customs Service. Cus-

toms also requests that copies of those comments be sent to Customs at the address previously specified.

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 146

Customs duties and inspection, exports, foreign-trade zones, imports.

PROPOSED REVISION TO THE CUSTOMS REGULATIONS

Under the authority of 5 U.S.C. 301, R.S. 251, as amended (19 U.S.C. 66), secs. 1-21, 48 Stat. 998, 999, as amended, 1000, 1001, 1002, as amended, 1003 (19 U.S.C. 81a-81u), 77A Stat. 14 (Gen. Hdnote 11) (19 U.S.C. 1202), secs. 623, as amended, 624, 46 Stat. 759 (19 U.S.C. 1623, 1624), and 96 Stat. 1051 (31 U.S.C. 9701), it is proposed to amend the Customs Regulations as set forth below:

PART 146—FOREIGN-TRADE ZONES

It is proposed to amend Chapter I, title 19, Code of Federal Regulations, by removing the existing Part 146.

It is proposed further to amend Chapter I, title 19, Code of Federal Regulations, by adding a revised Part 146 to read as follows:

PART 146—FOREIGN-TRADE ZONES

Sec.

146.0 Scope.

SUBPART A—GENERAL PROVISIONS

- 146.1 Definitions.
- 146.2 District director as Board representative.
- 146.3 Customs supervision.
- 146.4 Operator supervision.
- 146.5 Activation fee and annual fee.
- 146.6 Procedure for activation.
- 146.7 Zone changes.
- 146.8 Seals; affixing and breaking.
- 146.9 Permission of operator.
- 146.10 Authority to examine merchandise.
- 146.11 Transportation of merchandise to a zone.
- 146.12 Use of zone by carrier.
- 146.13 Special procedure for subzone and noncontiguous zone site.
- 146.14 Special provision for certain domestic status merchandise.
- 146.15 Subzone distant from adjacent port of entry.
- 146.16 Place of examination outside zone.
- 146.17 Record retention.

SUBPART B—INVENTORY CONTROL AND RECORDKEEPING SYSTEMS

- 146.21 General requirements.
- 146.22 Admission of merchandise to a zone.
- 146.23 Accountability for merchandise in a zone.
- 146.24 Removal of merchandise from a zone.
- 146.25 Annual reconciliation.
- 146.26 System review.

SUBPART C—ADMISSION OF MERCHANDISE TO A ZONE

- 146.31 Merchandise permitted in a zone.
- 146.32 Application and permit for admission of merchandise.
- 146.33 Temporary deposit for manipulation.
- 146.34 Merchandise transiting a zone.
- 146.35 Temporary deposit in a zone; incomplete documentation.
- 146.36 Examination of merchandise.
- 146.37 Operator responsibility.
- 146.38 Certificate of arrival of merchandise.
- 146.39 Domestic merchandise.
- 146.40 Subzone and noncontiguous zone site.

SUBPART D—STATUS OF MERCHANDISE IN A ZONE

- 146.41 Privileged foreign merchandise.
- 146.42 Nonprivileged foreign merchandise.
- 146.43 Domestic merchandise.
- 146.44 Zone-restricted merchandise.

SUBPART E—HANDLING OF MERCHANDISE IN A ZONE

- 146.51 Customs control of merchandise.
- 146.52 Manipulation, manufacture, or exhibition.
- 146.53 Destruction.
- 146.54 Safekeeping of merchandise and records.
- 146.55 Shortage, overage, and damage.

SUBPART F—REMOVAL OF MERCHANDISE FROM A ZONE

- 146.61 Constructive transfer to Customs territory.
- 146.62 Right to make entry.
- 146.63 Entry for consumption.
- 146.64 Entry for warehouse.
- 146.65 Examination, Classification, Valuation, and Liquidation.
- 146.66 Entry for transportation to another port.
- 146.67 Transfer from one zone to another.
- 146.68 Removal for exportation.
- 146.69 Removal for transportation or exportation; subzone or noncontiguous zone site.
- 146.70 Supplies, equipment, and repair material for vessels or aircraft.
- 146.71 Transfer of zone-restricted merchandise into Customs territory.
- 146.72 Transfer of domestic merchandise into Customs territory.
- 146.73 Release and removal of merchandise from zone.

SUBPART G—LIQUIDATED DAMAGES; PENALTIES; SUSPENSION; REVOCATION

- 146.81 Liquidated damages.
- 146.82 Penalties.
- 146.83 Suspension.
- 146.84 Revocation of zone grant.

AUTHORITY: R.S. 251, secs. 1-21, 48 Stat. 998, 999, as amended, 1000, 1001, 1002, as amended, 1003, 77A Stat. 14, sec. 623, as amended, 624, 46 Stat. 759; 19 U.S.C. 66, 81a-81u, 1202 (Gen. Hdnote 11), 1623, 1624; sec. 501, 96 Stat. 1051; 31 U.S.C. 9701. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

PART 146—FOREIGN-TRADE ZONES

§ 146.0 Scope.

Foreign-trade zones are established under the Foreign-Trade Zones Act and the general regulations and rules of procedure of the Foreign-Trade Zones Board contained in 15 CFR Part 400. This Part 146 of the Customs Regulations governs the admission of merchandise into a foreign-trade zone, manipulation, manufacture, exhibition, destruction, or storage in a zone; inventory control and recordkeeping system in a zone; exportation of merchandise from a zone; and transfer of merchandise from a zone into Customs territory.

SUBPART A—GENERAL PROVISIONS

§ 146.1 Definitions.

The following are general definitions for the purposes of this part:

(a) *Act*. "Act" means the Foreign-Trade Zones Act of June 18, 1934, as amended (48 Stat. 998-1003; 19 U.S.C. 81a-81u).

(b) *Activation*. "Activation" means approval by the grantee and district director for operations and for the admission and handling of merchandise in zone status. An area in a zone which is not activated will be considered part of the Customs territory.

(c) *Alteration*. "Alteration" means a change in the boundaries of an activated zone or subzone; activation of a separate noncontiguous site of an already-activated zone or subzone with the same operator at the same port; or the relocation of an already-activated site with the same operator.

(d) *Board*. "Board" is the Foreign-Trade Zones Board established by the Foreign-Trade Zones Act to carry out the provisions of the Act.

(e) *Customs territory*. "Customs territory" is the territory of the United States in which the general tariff laws of the United States apply but which is not included in the activated portion of any zone. "Customs territory of the United States" includes only the States, the District of Columbia, and Puerto Rico. (Gen. Hdnote. 2, Tariff Schedules of the United States (19 U.S.C. 1202)).

(f) *Deactivation*. "Deactivation" means voluntary discontinuation of the activation of an entire zone or subzone site by the grantee or operator. Discontinuance of the activated status of only a part of a site is treated as an alteration.

(g) *Grantee*. "Grantee" is a corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board.

(h) *Merchandise*. "Merchandise" includes goods, wares and chattels of every description, except prohibited articles. Building materials, production equipment, and supplies for use in operation of a zone are not "merchandise" for the purposes of this part.

(1) *Domestic merchandise*. "Domestic merchandise" is merchandise which has been (i) produced in the United States and not exported therefrom, or (ii) previously imported into Customs territory and properly released from Customs custody.

(2) *Foreign merchandise*. "Foreign merchandise" is imported merchandise which has not been properly released from Customs custody in Customs territory.

(3) *Conditionally admissible merchandise*. "Conditionally admissible merchandise" is merchandise which may be imported into the United States under certain conditions. Merchandise which is subject to permits or licenses, or which may be reconditioned to bring it into compliance with the laws administered by various Federal agencies, is an example of conditionally admissible merchandise.

(4) *Prohibited article*. "Prohibited article" is an article the importation of which into the United States is prohibited by law on grounds of public policy or morals, or any article which is excluded from a zone by order of the Board. Books urging treason or insurrection against the United States, obscene pictures, and lottery tickets are examples of prohibited articles.

(i) *Operator*. "Operator" is a corporation, partnership, or person that operates a zone, noncontiguous activated zone site, or a subzone. An operator's responsibilities and functions are covered in an operating agreement with the grantee, which can contract for the operation and maintenance of a zone or a zone activity, but agreements are subject generally to the Act and regulations and should include the terms between the parties concerning such matters as the time length of the agreement and termination provisions, as well as the responsibilities for dealing with the Customs Service. The district director's concurrence is required for the party designated "operator" to be recognized as such. A firm that is the sole occupant of a noncontiguous zone site or a subzone may be designated by the grantee as an operator. Where used in this part, the term "operator" also applies to a "grantee" that operates its own zone.

(j) *Reactivation*. "Reactivation" means a resumption of the activated status of an entire area that was previously deactivated without any change in the operator or the area boundaries. If the boundaries are different, the action is treated as an alteration. If the operator is different, it is treated as an activation.

(k) *Subzone*. "Subzone" is a special-purpose ancillary zone site authorized by the Board through grantees of public zones, for oper-

ations by individual firms that cannot be accommodated within an existing zone, when it can be demonstrated that the activity, usually manufacturing, will result in a significant public benefit. It is considered a noncontiguous extension of a zone for a single user, usually at its own facility and, in this sense, is a private rather than a public zone facility. A separate zone site within an industrial or commercial complex subject to common management and covenants is part of a zone, rather than a subzone.

(1) *Zone.* "Zone" is a foreign-trade zone established under the Foreign-Trade Zones Act. Where used in this part, the term also applies to a subzone, unless specified otherwise.

§ 146.2 District director as Board representative.

The district director in whose district the zone is located shall be in local charge of the zone as the resident representative of the Board.

§ 146.3 Customs supervision.

(a) *Assignment of Customs officers.* Customs officers will be assigned or detailed to a zone as necessary to maintain appropriate Customs supervision of merchandise and records pertaining thereto in the zone, and to protect the revenue.

(b) *Supervision.* Customs supervision over any zone or transaction provided for in this part will be in accordance with section 161.1 of this chapter. The district director may direct a Customs officer to supervise any transaction or procedure at a zone. Supervision may be performed through a periodic audit of the operator's records, quantity count of goods in a zone inventory, spot check of selected transactions or procedures, or review of recordkeeping, security, or conditions of storage in a zone. The operator shall permit any Customs officer access to a zone at any reasonable hour.

§ 146.4 Operator supervision.

(a) *Supervision.* The operator shall supervise all admissions, removals, recordkeeping, manipulations, manufacturing, destruction, exhibition, physical and procedural security, and conditions of storage in the zone as required by law and regulation. Supervision by the operator shall be that which a prudent manager of a storage, manipulation, or manufacturing facility would be expected to exercise, and may take into account the degree of supervision exercised by the zone firm having physical possession of zone merchandise.

(b) *Guard service.* The operator is authorized to provide guards or contract for guard service to safeguard the merchandise and ensure the security of the zone (section 146.54). This authorization does not limit the authority of the district director to assign Customs guards to protect the revenue under section 4 of the Act (19 U.S.C. 81d).

§ 146.5 Activation fee and annual fee.

The operator, or where there is no operator, the grantee, will be charged a nonrefundable fee to activate a zone or any portion of a

zone, or to alter or relocate an activated portion of a zone, under the provisions of 31 U.S.C. 9701. The operator of an activated zone will be charged a nonrefundable annual fee for each activated zone as payment of the cost of the additional Customs service required under the Act, as provided in 19 U.S.C. 81n or the regulations in this part. The operator or grantee shall pay the annual fee to the district director of Customs of the district in which the zone is located within 14 days after activation and within 14 days after the effective date of the published fee schedule, of each year thereafter that the area remains activated. The fee schedule will be revised annually and published in the Federal Register and the CUSTOMS BULLETIN.

§146.6 Procedure for activation.

(a) *Application.* A zone operator, or where there is no operator, a grantee, shall make written application to the district director of the district in which the zone is located to obtain approval of activation of a zone or zone site. The application must include a description of all the zone sites covered by the application, any operation to be conducted therein, and a statement of the general character of the merchandise to be admitted.

(b) *Supporting documents.* The application must be accompanied by the following:

- (1) The application fee required by section 146.5 of this part;
- (2) A blueprint of the area approved by the Board to be activated showing area measurements, including all openings and buildings; and all outlets, inlets, and pipe lines to any tank for the storage of liquid or similar product, that portion of the blueprint certified to be correct by the operator of the tank;
- (3) A guage table, when appropriate, showing the capacity in the appropriate unit, of any tank certified to be correct by the operator of the tank;
- (4) An executed Foreign-Trade Zone Operator's Bond on Customs Form 301 containing the bond conditions of section 113.73 of this chapter;
- (5) A procedures manual describing the inventory control and recordkeeping system that will be used in the zone, certified by the operator or grantee to meet the requirements of subpart B; and
- (6) The written concurrence of the grantee, when the operator applies for activation, in the requested zone activation.

(c) *Inquiry by district director.* As a condition of approval of the application, the district director may order an inquiry by a Customs officer into:

- (1) The qualifications, character, and experience of an operator and/or grantee and their principal officers; and
- (2) The security, suitability, and fitness of the facility to receive merchandise in a zone status.

(d) *Decision of the district director.* The district director shall promptly notify the applicant in writing of his decision to approve

or deny the application to activate the zone. If the application is denied, the notification will state the grounds for denial which need not be limited to those listed in section 146.83 of this part. The decision of the district director will be the final Customs administrative determination in the matter. The applicant may seek review by the Board of the decision to deny the application within 10 days after receipt of the notification.

(e) *Activation.* Upon the district director's approval of the application and acceptance of the executed bond, the zone or zone site will be considered activated, and merchandise may be admitted to the zone. Execution of the bond by an operator does not lessen the liability of the grantee to comply with the Act and implementing regulations.

§146.7 Zone changes.

(a) *Boundary modification.* A modification of a zone boundary involving a significant expansion of zone operations will be approved in accordance with the procedure established in the regulations of the Board (15 CFR Part 400). A boundary modification which is not significant may be approved by the Executive Secretary of the Board with the concurrence of the district director. The district director shall provide that concurrence, where warranted, in writing to the Executive Secretary and the applicant.

(b) *Alteration of an activated area.* An operator shall make written application to the district director for approval of an alteration of an activated area, including an alteration resulting from a zone boundary modification. The application must be accompanied by the fee required in section 146.5 and the other requirements specified in section 146.6. The district director may review the security, suitability, and fitness of the area, and shall reply to the applicant as provided for in section 146.6.

(c) *Deactivation or reactivation.* A grantee, or an operator with the concurrence of a grantee, shall make written application to the district director for deactivation of a zone site, indicating by layout or blueprint the exact site to be deactivated. No fee is required for deactivation. The district director shall not approve the application unless all merchandise in the site in zone status has been removed at the risk and expense of the operator. The district director may require an accounting of all merchandise in a zone as a condition of approving the deactivation. A zone site may be reactivated using the above procedure if a sufficient bond is on file under section 146.6(b)(4).

(d) *Suspension.* When approval of an activated area has been suspended through the procedure in subpart G, the district director may require all goods in that area to be transferred to another zone, a bonded warehouse, or other location, where they may lawfully be stored, if the district director considers that transfer advisable to protect the revenue or administer any Federal law or regulation.

(e) *New bond.* The district director may require an operator to furnish on 10 days notice a new Foreign-Trade Zone Operator's Bond on Customs Form 301. If the operator fails to furnish the new bond, no more merchandise will be received in the zone and that merchandise therein will be removed at the risk and expense of the operator. A new bond may be required if the activated zone area is substantially altered; the character of merchandise admitted to the zone or operations performed in the zone are substantially changed; a new operator is authorized by the grantee; the existing bond lacks good and sufficient surety; or for any other reason that substantially affects the liability of the operator under the bond. Although a new bond may not be required, the operator shall obtain the consent of the surety to any material alteration in the boundaries of the zone.

(f) *New operator.* A grantee of an activated zone site shall make written application to the district director for approval of a new operator, submitting with the application a copy of the proposed operating agreement, a certification by the new operator that the inventory control and recordkeeping system meets the requirements of subpart B, and a copy of the system procedures manual if different from the previous operator's manual. The district director may order an inquiry into the qualifications, character, and experience of the operator and its principal officers. The bond in section 146.6(b)(4) shall be submitted by the operator before the operating agreement may become effective. The district director shall promptly notify the grantee in writing of the approval or disapproval of the application.

(g) *List of officers, employees, and other persons.* The district director may make a written demand upon the operator to submit, within 30 days after the date of the demand, a written list of the names, addresses, social security numbers, and dates and places of birth of all officers and persons having a direct or indirect financial interest in the operator; and of all persons employed in the carriage, receipt or delivery of merchandise in zone status, whether employed by the zone operator or a zone tenant. If a list was previously furnished, the district director may make a written demand for the same information in respect to new persons employed in the carriage, receipt, or delivery of zone status merchandise within 10 days after such employment. The list need not include employees of common or contract carriers transporting goods to or from the zone.

§ 146.8 Seals; affixing and breaking.

The district director may authorize an operator to break a Customs in-bond seal affixed under section 18.4 of this chapter, or under any Customs order or directive, on any vehicle or container of merchandise approved for admission to the zone upon its arrival at the zone; or affix a Customs in-bond seal to any vehicle or container of merchandise for which an entry, withdrawal, or other ap-

proval document has been obtained for movement in bond from the zone. The authorized affixing or breaking of that seal will be considered to have been done under Customs supervision. The operator shall report to the district director, upon arrival of the vehicle or container at the zone, any seal found to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the district director. If the operator does not obtain the written concurrence of the carrier as to the condition of the seal or delivering conveyance, the district director shall deem the seal or delivering conveyance to be intact.

§ 146.9 Permission of operator.

An application for permission to transfer merchandise into a zone, or to do anything involving merchandise in a zone must include the written concurrence of the operator, except where the regulations of this part provide for the making of application by the operator itself or where the operator files a separate specific or blanket approval. The written concurrence of the operator in the removal of merchandise from a zone is not required, because the merchandise is released by the district director to the operator for delivery from the zone, as provided in section 146.73(a).

§ 146.10 Authority to examine merchandise.

The district director may cause any merchandise to be examined before or at the time of admission to a zone, or at any time thereafter, if the examination is considered necessary to facilitate the proper administration of any law, regulation, or instruction which Customs is authorized to enforce.

§ 146.11 Transportation of merchandise to a zone.

(a) *From outside Customs territory.* Merchandise may be brought directly to a zone from any place outside Customs territory.

(b) *Through Customs territory; foreign merchandise.* Foreign merchandise destined to a zone and transported in bond through Customs territory will be subject to the laws and regulations applicable to other merchandise transported in bond between two places in Customs territory.

(c) *From Customs territory; domestic merchandise.* Domestic merchandise may be brought to a zone from Customs territory by any means of transportation which will not interfere with the orderly conduct of business in the zone.

(d) *From a bonded warehouse.* Merchandise may be withdrawn from a bonded warehouse under the procedure in section 144.37(g) of this chapter and transferred to a zone in the same or at a different port for admission in zone-restricted status.

§ 146.12 Use of zone by carrier.

(a) *Primary use; lading and unlading.* The water area docking facilities, and any lading and unlading stations of a zone are intended primarily for the unlading of merchandise into the zone or the

lading of merchandise for removal from the zone. Their use for other purposes may be terminated by the Commissioner of Customs if found to endanger the revenue or by the Board if found to impede the primary use of the zone.

(b) *Carrier in zone not exempt from law or regulation.* Nothing in the act or the regulations in this part shall be construed as excepting any carrier entering, remaining in, or leaving a zone from the application of any other law or regulation.

§ 146.13 Special procedure for subzone and noncontiguous zone site.

(a) *Application.* An operator of a subzone or noncontiguous zone site, desiring to verify a count of its own merchandise upon admission to the zone and carry out the special procedures of subparts C and F (see sections 146.40, 146.63, 146.69) shall file a written application with the district director at least 30 days before the special procedure is to become effective. The application will describe the merchandise to be handled or processed, and the kind of operation which it will undergo.

(b) *Criteria.* The district director shall approve the application if the following criteria are met:

(1) The operator has made an arrangement to transmit statistical information directly to the Bureau of the Census, relieving Customs of the responsibility of collecting the information on Customs Form 214-A;

(2) The merchandise to be admitted to the zone, and the operations to be conducted therein, are known well in advance, are predictable and stable over the long term, and are relatively fixed in variety by the nature of the business conducted at the site;

(3) The operator owns or has a share in the ownership of the merchandise brought into the zone, or has decision-making authority over whether the merchandise may be accepted for shipment to the zone;

(4) The merchandise is not restricted or sensitive or of a type which requires Customs examination or documentation review before or upon its arrival at the zone; and

(5) The site is a subzone, or a noncontiguous zone site operated and occupied by a single enterprise (whether or not that enterprise consists of more than one separate but related legal entity). A zone area which is in, or abuts, a general purpose zone site may be considered "noncontiguous" if:

(i) It is separated from the rest of the general purpose site by a barrier meeting Customs cargo security standards set in T.D. 72-56;

(ii) There are no openings in the barrier for the movement of merchandise or persons between that area and the rest of the general purpose site; and

(iii) All merchandise for the area is received directly into, and delivered directly from, that area without passing through any other activated area of the general purpose site.

(c) *Decision on application.* The district director shall promptly notify the operator in writing of Customs decision on the application. If the decision is to deny the application, the district director shall specify the reason for denial in his reply. The district director's decision will constitute the final Customs' administrative determination concerning the application.

(d) *Revocation of approval.* Approval of the application will not affect the right of a Customs officer to examine the merchandise at any time it is under Customs custody or control. The district director may revoke the approval given under this section if it becomes necessary for Customs routinely to examine the merchandise or documentation before or upon admission to the zone.

§ 146.14 Special provision for certain domestic status merchandise.

(a) *Application.* A prospective applicant for admission of domestic merchandise (section 146.39) may make written application to the district director to allow the merchandise to be admitted to a zone without prior application and permit for each individual shipment.

(b) *Criteria.* The district director shall approve the application if:

(1) The applicant has made an agreement with the Bureau of the Census for direct transmittal to that agency of statistical information on the merchandise and Customs consequently need not collect and transmit a Customs Form 214-A to Census;

(2) Merchandise commercially identical to the merchandise covered by the application is not, nor will be received in the zone in a foreign or zone-restricted status;

(3) Domestic merchandise will not be mixed, combined or manufactured with foreign merchandise in such a way as to lose its identity;

(4) The merchandise is not a prohibited article;

(5) The operator has given written approval of the application; and

(6) The district director does not consider the prior application and permit for admission of the merchandise to be necessary for the protection of the revenue or the administration of any Federal law or regulation.

(c) *Decision on application.* The district director shall promptly notify the applicant in writing of the decision on the application. If the decision is to deny the application, the district director shall specify the reason for the denial in the reply. The decision of the district director will constitute the final Customs administrative determination concerning the application. Approval of the application will be valid until revocation by the district director. Approval of the application will not affect the right of a Customs officer periodically to review any transaction involving the covered merchandise.

(d) *Admission, handling, recordkeeping, and removal.* Upon approval of the application, the district director shall allow merchan-

dise covered by the application to be admitted to the zone; manipulated, manufactured, exhibited, or destroyed in the zone; or removed from the zone without prior application or permit. This privilege extends to merchandise covered by the application which was in the zone in domestic status at the time the application was approved. An application and permit will be required for transactions involving merchandise of any other status with which such domestic status merchandise will be combined in the zone, and covered domestic status merchandise must be clearly identified in the application. The operator shall comply with the inventory control and recordkeeping requirements in subpart B.

(e) *Revocation of approval.* The district director may revoke the approval of the application made under this section, if it becomes necessary for the district director to require prior application and permit for transactions involving the merchandise. The revocation will extend to merchandise which is in the zone at the time the revocation takes effect.

§ 146.15 Subzone distant from adjacent port of entry.

(a) *Examination and inspection at adjacent port.* When a subzone or subzone site more than 35 miles from the limits of the adjacent Customs port of entry is approved by the Board, the district director may order that merchandise destined for the subzone or to be removed from the subzone, and the required documentation, be presented for Customs examination and inspection at a designated location within the adjacent port of entry.

(b) *Merchandise to be admitted.* Foreign or zone-restricted status merchandise to be admitted to the subzone will be considered admitted in its quantity and condition at the time of delivery authorization to the subzone by the district director, and the operator will be responsible for any loss of merchandise occurring after the delivery authorization.

(c) *Merchandise to be removed.* Foreign or zone-restricted status merchandise being removed from the subzone will be considered to be removed in its quantity and condition at the time of delivery authorization from the subzone by the district director, and the operator will be responsible for any loss of merchandise occurring before delivery authorization.

(d) *Liquidated damages.* The subzone operator shall pay liquidated damages as required in subpart G for any loss occurring under paragraphs (b) and (c) of this section as though the loss occurred in the subzone.

(e) *Direct delivery.* If a subzone under this section has been approved under section 146.13 for the special procedures in subparts C and F, zone status merchandise may be admitted to, or removed from, the site as provided in those sections without respect to paragraphs (b) and (c). The documentation for that merchandise will be delivered to the district director within the limits of the adjacent

port, and the district director may order the delivery of the merchandise to the adjacent port for examination.

(f) *Domestic merchandise.* Domestic merchandise for which no permit for admission is required as provided in section 146.14 need not be presented for Customs examination, and an application need not be filed with the district director. Domestic merchandise for which an application and permit is required, will be presented for examination only when ordered by the district director, but documentation for any transaction involving that merchandise must be presented to the district director within the limits of the adjacent port for review and permit as provided in this part.

§ 146.16 Place of examination outside zone.

(a) *Application.* An operator may request in writing that the district director examine or inspect merchandise destined to, or being removed from, the zone at a location outside the zone but within the limits of the port where the zone is located, with the understanding that the operator will be responsible for delivery of the merchandise between the zone and the place of examination. The district director shall not grant a request made under this section for merchandise to be transported from one port to another port, or from the jurisdiction of one port to that of another port.

(b) *Certification.* The request must be accompanied by a certification that the operator agrees to be responsible for the loss of any merchandise between the zone and the place of examination as though the merchandise were lost in the zone, and agrees to pay liquidated damages for loss as set forth in subpart G.

(c) *Approval of application.* The district director shall approve the request if he is satisfied that the merchandise can be conveniently examined elsewhere than at the zone, the revenue is protected, and all Customs laws and regulations can be administered.

§ 146.17 Record retention.

The operator shall retain the records required in this part and defined in section 162.1a of this chapter at the zone for at least 5 years after the date of entry relating to the merchandise removed from the zone.

SUBPART B—INVENTORY CONTROL AND RECORDKEEPING SYSTEM

§ 146.21 General requirements.

(a) *System capability.* The operator shall maintain either a manual or automated inventory control and recordkeeping system or combination manual and automated system capable of:

(1) Accounting for all merchandise temporarily deposited, admitted, granted a zone status and/or status change, stored, exhibited, manipulated, manufactured, destroyed, and/or removed from a zone;

(2) Producing accurate and timely reports and documents as required by this part;

(3) Identifying shortages and overages of merchandise in a zone in sufficient detail to determine the quantity, description, tariff classification, zone status, and value of the missing or excess merchandise;

(4) Accounting for the physical output from a given input;

(5) Providing all the information necessary to make entry for merchandise being transferred to the Customs territory;

(6) Providing an audit trail to Customs forms from admission through manipulation, manufacture, destruction, or removal of merchandise from a zone; and

(7) Safeguarding and making available to Customs all records pertaining to the inventory control and recordkeeping system for merchandise admitted to a zone.

(b) *Procedures manual.* (1) The operator shall provide the district director with a copy in English of its written inventory control and recordkeeping system procedures manual in accordance with the requirements of this part.

(2) The operator shall keep current its inventory control and recordkeeping system procedures manual and shall submit to the district director any change at the time of its implementation.

(3) The operator may authorize a zone user to maintain its individual inventory control and recordkeeping system procedures manual. The operator shall furnish a copy of the zone user's procedures manual, including any subsequent changes, to the district director. However, the operator will remain responsible to Customs and liable under its bond for supervision, defects in, or failures of a system.

(4) The operator's procedures manual and subsequent changes will be furnished to the district director for information purposes only. Customs receipt of a manual does not indicate approval or rejection of a system.

(c) *Liability of operator.* Zone activation approval does not relieve the operator of liability for complying with all inventory control and recordkeeping system requirements set forth in this part.

§ 146.22 Admission of merchandise to a zone.

(a) *Identification.* All merchandise will be recorded in a receiving report or document using a lot control or unique identifier. All merchandise, except domestic status merchandise for which no permit for admission is required under section 146.14, will be traceable to a Customs Form 214 and accompanying documentation.

(b) *Reconciliation.* Quantities received will be reconciled to a receiving report or document such as an invoice with any discrepancy reported upon discovery to the district director as provided in section 146.37.

(c) *Incomplete documentation.* Merchandise received without complete Customs documentation or which is unacceptable to the inventory control and recordkeeping system will be recorded in a suspense account or record until documentation is complete or the

system is capable of accepting the information. The receiving report or document will provide sufficient information to identify the merchandise and distinguish it from other merchandise. The suspense account or record will be completely documented for Customs review to explain the differences noted and corrections made.

(d) *Recordation.* Merchandise received will be accurately recorded in manual and/or automated inventory system records from the receiving report or document using the lot control or unique identifier for traceability. The inventory record will state the quantity and date received, cost or value where applicable, zone status, and description of the merchandise, including any part or stock number.

§ 146.23 Accountability for merchandise in a zone.

(a) *Identification of merchandise.* (1) *General.* A zone lot or other unique identifier will be used to identify and track merchandise.

(2) *Fungible merchandise.* Fungible merchandise may be identified by an inventory method authorized by the Commissioner of Customs which is consistently applied, such as First-In-First-Out (FIFO).

(b) *Inventory record.* The inventory record will specify by lot number or unique identifier:

(1) Location of merchandise;

(2) Zone status;

(3) Cost or value; unless operator's or user's financial records maintain cost or value and the records are made available for Customs review;

(4) Beginning balance, cumulative receipts and disbursements or removals, adjustments, and current balance on hand by date and quantity;

(5) Destruction of merchandise; and

(6) Scrap, waste, by-products, and joint products.

(c) *Physical Inventory.* (1) *Annual.* The operator shall take at least an annual physical inventory of all merchandise in the zone (unless continuous cycle counts are taken as part of an ongoing inventory control program) with prior notification of the date(s) given to Customs for any supervision of the inventory deemed necessary. The operator shall notify the district director promptly of any adjustments required to reconcile the inventory record with a physical count of the merchandise taken as provided under section 146.25.

(2) *Overage.* An inventory overage of merchandise except for domestic merchandise for which no permit is required, will require zone admission, unless that merchandise is transferred to general order or an appropriate entry filed.

(3) *Shortage.* An inventory shortage except for domestic merchandise for which no permit for admission is required, will be subject to the assessment of duties and taxes plus liquidated damages under the operator's bond.

§ 146.24 Removal of merchandise from a zone.

(a) *Accountability.* (1) All zone status merchandise removed from a zone, will be accurately recorded within the inventory control and recordkeeping system. All removals, except for domestic merchandise for which no permit for removal is required, will be accurately documented on the appropriate Customs form traceable within the inventory control and recordkeeping system.

(2) The inventory control system for inventory relief (removal) must have the capability to trace a merchandise removal back to a zone admission, even where the merchandise is changed through manipulation, manufacture, or any other means.

(b) *Information.* The inventory control and recordkeeping system must be capable of providing all information necessary to make entry for transfer of merchandise to the Customs territory.

§ 146.25 Annual reconciliation.

(a) *Statement.* The operator shall prepare a reconciliation statement within 90 days after the end of the zone/subzone year. The operator shall retain that annual reconciliation for a spotcheck or audit by Customs, and need not furnish it to Customs unless requested. There is no form specified for the preparation of the statement.

(b) *Information required.* The statement must contain a description of merchandise for each lot or other unique identifier, zone status, quantity on hand at the beginning of the year, cumulative receipts and removals (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year.

(c) *Certification.* The operator shall submit to the district director within 10 working days after the annual reconciliation a letter signed by the operator certifying that the annual reconciliation has been prepared, is available for Customs review, and that it is accurate. The certification letter must contain the name and street address of the operator; where the required records are available for Customs review; and the name, title, and telephone number of the person having custody of the records. Reporting of shortages and overages based on the annual reconciliation will be made in accordance with section 146.55. Those reports must accompany the certification letter.

§ 146.26 System review.

The operator shall perform an annual internal review of the inventory control and recordkeeping system and shall report to the district director any deficiency discovered and corrective action taken to ensure that the system meets the requirements of this part.

SUBPART C—ADMISSION OF MERCHANDISE TO A ZONE

§ 146.31 Merchandise permitted in a zone.

Merchandise of every description, including over-quota merchandise, may be brought into a zone unless prohibited by law. A distinction is made between prohibited articles and conditionally admissible merchandise.

(a) *Prohibited article.* District directors are required to exclude this class of article and shall not permit it to be transferred to a zone if aware of its prohibited status. If there is a question as to whether the merchandise may be prohibited, district directors may permit the temporary deposit of the merchandise in a zone pending a final determination of its status. Any prohibited article which is found within a zone will be disposed of in the manner provided for in the laws and regulations applicable to that article.

(b) *Conditionally admissible merchandise.* The admission of merchandise of this class into a zone is subject to any requirements of the Federal agency concerned.

§ 146.32 Application and permit for admission of merchandise.

(a) *Application on Customs Form 214 and permit.* Except for merchandise temporarily admitted (section 146.33), in-transit merchandise (section 146.34), or domestic merchandise admitted without permit (section 146.39(a)), merchandise may be admitted into a zone only upon application on a uniquely-numbered Customs Form 214, Application for Foreign-Trade Zone Admission and/or Status Designation, and the issuance of a permit by the district director. The operator shall present the application to the district director in the number of copies that officer considers necessary, and shall include a statistical copy on Customs Form 214-A for transmittal to the Bureau of the Census, unless the operator has made arrangements for the agency.

(b) *Supporting documents.* (1) *Commercial documentation.* The operator shall submit with the application two copies of an invoice or similar commercial document which meets the requirements of subpart F, Part 141, of this chapter, for any merchandise to be admitted to a zone. The notation of tariff classification and value required by section 141.90 of this chapter need not be made, unless the merchandise is to be admitted in privileged status.

(2) *Evidence of right to make entry.* The operator shall submit with the application a document like that which would be required as evidence of a right to make entry for merchandise in Customs territory under section 141.11 or 141.12 of this chapter.

(3) *Release order.* Merchandise will not be authorized by Customs for delivery to a zone until a release has been executed by the carrier that brought the merchandise to the port, unless the merchandise is released back to that same carrier for delivery to the zone (see section 141.11 of this chapter concerning Customs responsibility). When a release order is required, it will be made on Customs

Form 7529 or by the following statement on the reverse side of the Customs Form 214:

Authority is hereby given to release the merchandise described in this application to: _____

(Name of carrier) _____

(Signature and title of carrier representative) _____

A blanket or qualified release order may be authorized for the transfer of merchandise to a zone as provided for in section 141.111 of this chapter.

(4) *Application to unlade.* For merchandise unladen in the zone directly from the importing carrier, the application on Customs Form 214 will be supported by an application to unlade on Customs Form 3171.

(5) *Other documentation.* The district director may require additional information or documentation as needed to conduct an examination of merchandise under Customs selective entry processing criteria, or to determine whether the merchandise is admissible to the zone.

(c) *Conditions for issuance of a permit.* Merchandise for which an application for admission to a zone is made will be admitted when:

(1) The application is properly executed and includes the zone status desired for the merchandise as provided in subpart D of this part;

(2) The operator's approval appears either on the application or in a separate specific or blanket approval;

(3) The merchandise is retained for examination at the place of unloading, the zone, or other location designated by the district director, except for a subzone or zone site specified in section 146.13. The merchandise may be examined as if it were to be entered for consumption or warehouse; and

(4) The permit is granted by the district director, as representative of the Board, when satisfied that all requirements have been fulfilled.

(d) *Blanket application for admission of merchandise.* Merchandise may be admitted to a zone upon presentation of a Customs Form 214 covering more than one shipment of merchandise, i.e., a blanket application for admission, when:

(1) The shipments arrive under one transportation entry as described in section 141.55 of this chapter; or

(2) The shipments are destined to the same zone applicant on a single business day, and the applicant—

(i) Submits statistical trade information concerning the merchandise directly to the Bureau of the Census under an agreement with that agency, and

(ii) Presents to the district director before the merchandise is released into the zone the invoices or other documentation required by paragraph (b). Each invoice must contain a unique identifier to relate the shipment to the manifest of the carrier that brought the merchandise to the port having jurisdiction over the zone, and the

inventory control and recordkeeping system of the operator as described in subpart B.

§ 146.33 Temporary deposit for manipulation.

Imported merchandise for which an entry has been made and which has remained in continuous Customs custody may be brought temporarily to a zone for manipulation and return to Customs territory under Customs supervision pursuant to section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), and section 19.11 of this chapter. That merchandise will not be considered within the purview of the Act but will be treated as though remaining in Customs territory. No zone form or procedure will be considered applicable, but the merchandise will remain subject in the zone to any requirements necessary for the enforcement of section 562 and other Customs laws.

§ 146.34 Merchandise transiting a zone.

The following procedure is applicable when merchandise is to be unladen from any carrier in the zone for immediate transfer to Customs territory, or if it is to be transferred from Customs territory through the zone for immediate lading on any carrier in the zone:

(a) *Application.* Application for permission to lade or unlade will be filed with the district director on Customs Form 3171 prior to transfer of the merchandise into the zone.

(b) *Permit.* The district director shall permit the transfer unless he has reason to believe that the merchandise will not be moved promptly from the zone or made the subject of an application for zone status on Customs Form 214 in accordance with section 146.32(a).

(c) *Treatment of merchandise.* Upon the issuance of a permit to lade, or unlade, the merchandise will be treated as though the lading or unlading were in the Customs territory.

(d) *Failure to lade merchandise without delay.* Merchandise brought into a zone for lading on a carrier, but not laden without a delay which may endanger the revenue, must be made the subject of an application for zone status in accordance with section 146.32(a) or be removed from the zone.

§ 146.35 Temporary deposit in a zone; incomplete documentation.

(a) *General.* If information or documentation necessary to complete the Customs Form 214 is not available at the time of arrival of merchandise at the port, the person with the right to apply for admission will be allowed, upon application and compliance with the conditions in paragraph (c), to deposit the merchandise in the zone for a period not to exceed 5 working days unless a longer period is granted by the district director. The merchandise will be subject to examination as provided in section 146.36.

(b) *Application.* An application for temporary deposit will be made by submitting to the district director:

(1) A properly signed and uniquely-numbered Customs Form 214 in the number of copies requested by the district director; and

(2) A declaration that the information or documentation necessary to complete the Customs Form 214 is unavailable.

(c) *Conditions.* Merchandise temporarily deposited under the provisions of this section will:

(1) Be segregated from all other zone merchandise;

(2) Have no zone status and be considered to be in the Customs territory;

(3) Be held under the bond, and at the risk, of the operator; and

(4) Be manipulated only to the extent necessary to obtain sufficient information about the merchandise to file the appropriate admission or entry documentation.

(d) *Submission of completed Customs Form 214.* A complete and accurate Customs Form 214 will be submitted as provided in section 146.32 within 5 working days plus any extension granted by the district director, or the merchandise may be placed in general order.

§ 146.36 Examination of merchandise.

All merchandise covered by a Customs Form 214 will be retained for Customs examination at the place of unloading, the zone, or another location, as designated by the district director. The district director may authorize release of the merchandise without examination, as provided in section 151.2(a)(2) of this chapter. If a physical examination is conducted, the Customs officer shall note the results of the examination on the invoices.

§ 146.37 Operator responsibility.

(a) *Maintenance of admission documentation.*

(1) *Lot file.* The operator shall open and maintain a lot file containing a copy of the Customs Form 214 and the examination invoice received from Customs, and all other documentation necessary to account for the merchandise covered by each Customs Form 214. The lot file will be maintained in sequential order by using the unique number assigned to each Customs Form 214 as the file reference number. In zones where a Customs-authorized inventory method other than specific identification of merchandise is used, e.g., First-In-First-Out (FIFO), no lot file is required but the operator shall maintain a file of all Customs Forms 214 in sequential order.

(2) *Examination invoice.* The operator shall give a copy of the examination invoice to the person making entry to remove the merchandise from the zone, upon request of that person or the district director.

(b) *Liability for merchandise.* The operator will be held liable under its bond for the receipt of merchandise in the quantity and

condition as described on the Customs Form 214, except as modified by a discrepancy report:

(1) Signed jointly by the operator and carrier on the Customs Form 214 or other approved form within 15 days after admission of the merchandise, and reported to the district director within 2 working days thereafter; or

(2) Submitted on Customs Form 5931 under the provisions of subpart A, part 158, of this chapter within 20 days after admission of the merchandise. The operator may file a Customs Form 5931 on behalf of the person who applied for admission of merchandise to the zone.

(c) *Supervision of merchandise.* The district director may authorize the receipt of zone status merchandise at a zone without physical supervision by a Customs officer (see section 146.8). In that case, the operator shall supervise the receipt of merchandise into the zone, report the receipt and condition of the merchandise, and mark packages with the unique Customs Form 214 number so that the merchandise can be traced to a particular Customs Form 214. Packages that are accounted for under a Customs-authorized inventory method other than specific identification, need not be marked with a unique Customs Form 214 number but must be adequately identified so Customs can conduct an inventory count. The operator shall submit the Customs Form 214 to Customs at the location specified by the district director.

§ 146.38 Certificate of arrival of merchandise.

Whenever a certificate prepared by Customs as to the arrival of any merchandise in a zone is required by a Federal agency, the district director shall issue the document certifying only that authorization to deliver the merchandise to a zone has been made. The operator shall issue a certificate of arrival of merchandise at a zone.

§ 146.39 Domestic merchandise.

(a) *Special procedure approved.* After approval by the district director of an application submitted under section 146.14 for domestic status merchandise, no other application for admission of the merchandise will be accepted by Customs.

(b) *Other domestic merchandise.* Domestic status merchandise not covered by an approved application under section 146.14 will require an application for admission on Customs Form 214 (without supporting documentation) as provided in section 146.32(a).

§ 146.40 Subzone and noncontiguous zone site.

(a) *Direct delivery.*

(1) *Authorization.* The district director may allow direct delivery of merchandise to a subzone or zone site approved under section 146.13 without prior application and approval on Customs Form 214 or Customs examination of the merchandise.

(2) *Right to examine.* The district director retains the authority, notwithstanding paragraph (a)(1), to conduct a physical examina-

tion of merchandise before or upon its admission to a subzone or zone site. The district director may order such an examination whenever it is deemed necessary to protect the revenue or administer any Federal law or regulation.

(b) *Arrival of conveyance.* Upon arrival at a subzone or zone site of a conveyance containing foreign merchandise, the operator shall:

(1) Collect in-bond or cartage documentation from the carrier, and notify the district director before unloading the conveyance if the shipment should have been in bond but is not;

(2) Check the condition of any seal affixed to the conveyance, and if broken, missing or improperly affixed, notify the district director and receive instructions before unloading the merchandise;

(3) Check each incoming in-bond and cartage shipment to determine if the manifested quantity or the quantity on the cartage document agrees with the quantity actually received;

(4) Sign and date the in-bond or cartage documentation; and

(5) Forward the in-bond or cartage documentation so as to reach the district director within 2 working days after the date of arrival of the conveyance at the subzone or zone site.

(c) *Admission of merchandise; alternative procedures.*

(1) *Cumulative Customs Form 214.* The operator shall submit to the district director each business day a properly signed and uniquely-numbered Customs Form 214 listing all merchandise, except for domestic status merchandise admitted under section 146.14, recorded into the inventory control and recordkeeping system during the previous business day. The Customs Form 214 must contain a list of all in-bond (I.T.) numbers or the unique number of any cartage document, as well as the number of invoices for each I.T. or cartage document, pertaining to merchandise which has been entered into the system.

(2) *Individual Customs Form 214.* If a cumulative Customs Form 214 is not submitted as provided in paragraph (c)(1), the operator shall file with the district director each business day an individual Customs Form 214 covering each shipment recorded into the inventory control and recordkeeping system during the previous business day.

(3) *General order.* Merchandise which is not admitted into a subzone or zone site as provided in this section within 5 working days after its arrival there may be sent to general order unless:

(i) The district director grants the operator's request for an extension of the 5-working day period; or

(ii) The importer of record files an appropriate Customs entry for the merchandise and removes it from the zone premises.

(d) *Operator responsibility for merchandise.*

(1) *Manifested quantities.* The manifested quantity or the quantity stated on the cartage document will be considered the quantity admitted to the subzone or zone site unless:

(i) The in-bond or cartage documentation is amended by the operator and carrier in joint agreement noting any discrepancy, prior to forwarding that documentation to the district director; or

(ii) The operator independently submits to the district director a discrepancy report on Customs Form 5931, and that official finds the operator not liable for any discrepancy.

(2) *In-bond manifest file.* The operator shall maintain a file of open in-bond manifests in chronological order of date of conveyance arrival to identify shipments that have arrived but the entire contents of which have not been admitted to the subzone or zone site as provided in this section. The operator shall notify the district director, by annotation on the Customs Form 214, when the entire contents of a shipment have been admitted.

(3) *Inventory control and recordkeeping system.* The operator shall establish and maintain a continuing input quality control program to ensure that information concerning merchandise in admission documents, verified or corrected by counts and checks, is accurately recorded in the inventory control and recordkeeping system. Quantities recorded in the system, after allowance by the district director for any discrepancies, will be the quantities of merchandise for which the operator shall be held liable under its bond for admission to the subzone or zone site. A discrepancy involving a within-case shortage (or overage) need not be reported on Customs Form 5931, if the operator is able to report that information in another manner so the district director can determine whether there is liability for the discrepancy under the bond of any party to the importation.

SUBPART D—STATUS OF MERCHANDISE IN A ZONE

§ 146.41 Privileged foreign merchandise.

(a) *General.* Foreign merchandise which has not been manipulated or manufactured so as to effect a change in tariff classification will be given status as privileged foreign merchandise on proper application to the district director.

(b) *Application.* Each application for this status will be made on Customs Form 214 at the time of filing the application for admission of the merchandise into a zone or at any time thereafter before the merchandise has been manipulated or manufactured in the zone in a manner which has effected a change in tariff classification.

(c) *Supporting documentation.* Each applicant for this status shall submit to the district director with the application an invoice noted as provided for in section 141.90 of this chapter.

(d) *Determination of duties and taxes.* Upon receipt of the application and accompanying invoice, the district director may examine the merchandise to determine whether to approve the application. The merchandise will be subject to appraisal as provided in section 146.65, and tariff classification according to its condition

and quantity, at the rate of duty and tax in force, on the date the application is filed in complete and proper form.

(e) *Merchandise subject to tariff-rate quota.* Classification of merchandise subject to a tariff-rate import quota will be made only at the higher non-quota duty rate in effect on the date privileged foreign status was granted. If entry is made under subpart F, the entry will be liquidated at the higher non-quota duty rate.

(f) *Status as privileged foreign merchandise binding.* A status as privileged foreign merchandise cannot be abandoned and remains applicable to the merchandise even if changed in form by manipulation or manufacture, except in the case of recoverable waste (see section 146.65(c)(2)), as long as the merchandise remains within the purview of the Act. However, privileged foreign merchandise may be exported or withdrawn for supplies, equipment, or repair material of vessels or aircraft without the payment of taxes and duties, in accordance with sections 146.68 and 146.70.

§ 146.42 Nonprivileged foreign merchandise.

All of the following will have the status of nonprivileged foreign merchandise:

(a) *Foreign merchandise.* Foreign merchandise properly in a zone which does not have the status of privileged foreign merchandise or of zone-restricted merchandise;

(b) *Waste.* Waste recovered from any manipulation or manufacture of privileged foreign merchandise in a zone; and

(c) *Certain domestic merchandise.* Domestic merchandise in a zone which by reason of noncompliance with the regulations in this part has lost its identity as domestic merchandise will be treated as foreign merchandise. Any domestic merchandise will be considered to have lost its identity if the district director determines that it cannot be identified positively by a Customs officer as domestic merchandise on the basis of an examination of the articles or consideration of any proof that may be submitted promptly by a party in interest.

§ 146.43 Domestic merchandise.

(a) *General.* Domestic status may be granted to merchandise:

(1) The growth, product, or manufacture of the United States on which all internal-revenue taxes, if applicable, have been paid;

(2) Previously imported and on which duty and tax has been paid; or

(3) Previously entered free of duty and tax.

(b) *Application.* Application for domestic status shall be included in the application on Customs Form 214 to admit the merchandise into the zone, but the documents in support of the application described in section 146.32(b) are not required. Domestic merchandise admitted without application and permit under section 146.14 will be granted domestic status.

(c) *Domestic packing and repair materials.* If the district director is satisfied that the revenue will be protected, and the rights of importers will not be prejudiced, that official may permit the transfer to a zone of domestic packing and repair materials and related articles without requiring an application on Customs Form 214.

(d) *Return of merchandise to Customs territory.* Upon compliance with the provisions of this section and section 146.72, any of the merchandise specified in paragraph (a) may subsequently be returned to Customs territory free of quotas, duty, or tax.

§ 146.44 Zone-restricted merchandise.

(a) *General.* Merchandise taken into a zone for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage will be given zone-restricted status on proper application. That status may be requested at any time the merchandise is located in a zone, but cannot be abandoned once granted. Merchandise in zone-restricted status may not be removed to Customs territory for domestic consumption except where the Board determines the return to be in the public interest.

(b) *Application.* Application for zone-restricted status will be made on Customs Form 214.

(c) *Merchandise considered exported.* (1) *For Customs purposes.* If the applicant desires a zone-restricted status in order that the merchandise may be considered exported for the purpose of any Customs law, all pertinent Customs requirements relating to an actual exportation shall be complied with as though the admission of the merchandise into the zone constituted a lading on an exporting carrier at a port of final exit from the United States. Any declaration or form required for actual exportation will be modified to show that the merchandise has been deposited in a zone in lieu of actual exportation, and a copy of the approved Customs Form 214 may be accepted in lieu of any proof of shipment required in cases of actual exportation.

(2) *For other purposes.* If the merchandise is to be considered exported for the purpose of any Federal law other than the Customs laws, the district director shall be satisfied that all pertinent laws, regulations, and rules administered by the Federal agency concerned have been complied with before the Customs Form 214 is approved.

(d) *Merchandise entered for warehousing transferred to a zone.* Merchandise entered for warehousing and transferred to a zone, other than temporarily for manipulation and return to Customs territory as provided for in section 146.33, will have the status of zone-restricted merchandise when admitted into the zone. The application on Customs Form 214 will state that zone-restricted status is desired for the merchandise.

SUBPART E—HANDLING OF MERCHANDISE IN A ZONE

§ 146.51 Customs control of merchandise.

No merchandise, other than domestic merchandise approved under section 146.14, will be manipulated, manufactured, exhibited, destroyed, or removed from a zone in any manner or for any purpose, except under Customs permit as provided for in this part. The district director may require segregation of any zone merchandise when that official considers it necessary for the protection of the revenue.

§ 146.52 Manipulation, manufacture, or exhibition.**(a) Application.**

(1) *Filing.* The operator shall file with the district director an application on Customs Form 216 for permission to manipulate, manufacture, or exhibit merchandise in a zone. None of those operations may be conducted until the district director has approved the application.

(2) *Blanket application.* The district director is authorized to approve a blanket application for a period up to one year for a continuous or repetitive operation. The district director may disapprove or revoke approval of a blanket application and may require the operator to file an individual application when necessary to protect the revenue or administer any law or regulation.

(b) Approval of application.

(1) *General.* The district director shall approve the application unless the proposed operation would be in violation of law or regulation; the place designated for its performance is not suitable for preventing confusion of the identity or status of the merchandise or for safeguarding the revenue; or the Executive Secretary of the Board has not granted approval of a new manufacturing operation.

(2) *Privileged foreign merchandise.* An application made under this section for permission to manipulate or manufacture privileged foreign merchandise will not be approved until the district director is satisfied that the examination provided for in section 146.41(d) has been completed.

(3) *Lot system merchandise.* When an operator maintains a zone inventory under a lot system, merchandise from different lots will not be mixed without approval by the district director on Customs Form 216.

(c) *Appeal of adverse ruling.* If the application is denied by the district director for any reason, the applicant or the grantee may appeal the adverse ruling to the Board. If any revenue protection considerations are involved in the application, the Board shall be guided by the determinations of the Secretary of the Treasury with respect to them.

(d) Report.

(1) *Separate application.* The operator shall report on Customs Form 216 the results of an approved manipulation or manufacture

of merchandise (other than that covered by a blanket application made under paragraph (a)(2)), unless the district director chooses physically to supervise the operation. The operator shall retain the completed Customs Form 216 in its inventory control and record-keeping system.

(2) *Blanket application.* The operator shall maintain an approved blanket application to manipulate or manufacture in its inventory control and recordkeeping system. In lieu of the report on Customs Form 216 required in subparagraph (1), the operator shall maintain a record of the operation in its inventory control and recordkeeping system so as to provide an accounting and audit trail of the merchandise through the approved operation.

§ 146.53 Destruction.

(a) *Application.* Each application to destroy merchandise in a zone will be filed with the district director on Customs Form 216. A blanket application may be approved or revoked under the same circumstances as provided for in section 146.52.

(b) *Approval of application and procedure.*

(1) The district director shall approve the application if satisfied that the destruction will be effective and complete, and the revenue will be protected. The district director may permit the destruction to be done outside the zone, in whole or in part and at the risk and expense of the applicant, and under such conditions necessary to protect the revenue, if proper destruction cannot be accomplished within the zone. Any residue of destruction which is entirely worthless may be removed to Customs territory for disposal.

(2) Distilled spirits, wines, and fermented malt liquors may not be brought into a zone for the purpose of destruction, as provided for in section 146.44(a). If those products have been admitted to a zone for another purpose and subsequently become unmerchandise, they may be destroyed under Customs supervision, with the approval of the appropriate official of the Bureau of Alcohol, Tobacco, and Firearms under the provisions of title 27, Code of Federal Regulations.

(c) *Report of destruction.* The operator shall certify the destruction on Customs Form 216, and maintain the report in its inventory control and recordkeeping system.

§ 146.54 Safekeeping of merchandise and records.

The operator is responsible for the safekeeping of merchandise and records concerning merchandise admitted to a zone. The operator, at its liability, may allow the zone importer or owner of the goods to store, safeguard, and otherwise maintain or handle the goods and the inventory records pertaining to them.

(a) *Records maintenance.* The operator shall maintain the inventory control and recordkeeping system in accordance with the provisions of subpart B, retain all records pertaining to zone merchandise for 5 years after the merchandise is removed from the zone,

and protect proprietary information in its custody from unauthorized disclosure.

(b) *Merchandise security.* The operator shall maintain the zone and establish procedures adequate to ensure the security of merchandise located in the zone in accordance with applicable Customs security standards and specifications.

(c) *Storage and handling.* The operator shall store and handle merchandise in a zone in a safe and sanitary manner to minimize damage to the merchandise, avoid hazard to persons, and meet local, state, and Federal requirements applicable to a specific kind of goods. All trash and waste will be promptly removed from a zone. Aisles will be established and maintained, and doors and entrances left unblocked for access by Customs officers and other persons in the performance of their official duties.

§ 146.55 Shortage, overage, and damage.

(a) *Report required.* The operator shall report in writing to the district director upon discovery of:

- (1) Theft or suspected theft of merchandise;
- (2) Excess merchandise not properly admitted to the zone;
- (3) Shortage of one percent (1%) or more of the quantity of merchandise in a lot or covered by a unique identifier, if the missing merchandise would have been subject to duties and taxes of \$100 or more upon entry into the Customs territory; or
- (4) Damage amounting to one percent (1%) or more of the value of merchandise in a lot or covered by a unique identifier, if the damage is \$1,000 or more.

The operator shall record upon discovery *all* shortages, overages, and damage, whether or not required to be reported at that time to the district director, in its inventory control and recordkeeping system. The operator shall report shortages, overages, and damage to Customs as required in the annual reconciliation statement under section 146.25.

(b) *Certain domestic merchandise.* Except in a case of theft or suspected theft, the operator need not file a report with the district director or note in the annual reconciliation statement, any shortage, overage, or damage concerning domestic status merchandise for which no permit for admission is required.

(c) *Shortage.*

(1) *Operator responsibility.* The operator is responsible under its Foreign-Trade Zone Operator's Bond for any loss of merchandise or for any merchandise which cannot be located or otherwise accounted for (except domestic status merchandise for which no permit for admission was required), unless the district director is satisfied that the merchandise was:

- (i) Never received in the zone;
- (ii) Removed from the zone under proper permit;
- (iii) Not removed from the zone; or

(iv) Lost or destroyed in the zone through fire or other casualty, evaporation, spillage, leakage, absorption, or similar cause, and did not enter the commerce of the United States.

(2) *Liability for duty and taxes.* Upon demand of the district director, the person with the right to make entry shall make entry for and pay duties and taxes applicable to merchandise which is missing or otherwise not accounted for. An entry for and payment of duties and taxes on that merchandise will not relieve the operator of liability under its bond, but the district director shall consider those acts in determining whether to assess liquidated damages, or to cancel a liquidated damage assessment upon payment of a lesser amount.

(d) *Overage.* The person with the right to make entry shall file, within 5 days after discovery of an overage, an application for admission of the merchandise to the zone on Customs Form 214 or file a Customs entry for the merchandise. If a Customs Form 214 or a Customs entry is not timely filed, and the district director has not granted an extension of the time provided, the merchandise may be sent to general order.

(e) *Damage.* The liability of the operator under its Foreign-Trade Zone Operator's Bond may be adjusted for the loss of value resulting from damage to the merchandise occurring in the zone. The operator shall segregate, mark, and otherwise secure damaged merchandise to preserve its identity. The operator shall handle merchandise so as to minimize damage or deterioration, as provided for in section 146.54.

SUBPART F—REMOVAL OF MERCHANDISE FROM A ZONE

§ 146.61 Constructive transfer to Customs territory.

The district director shall accept receipt of any entry in proper form provided under this subpart, and the merchandise described therein will be considered to have been constructively transferred to Customs territory at that time, even though the merchandise remains physically in the zone. If the entry is thereafter rejected or cancelled, the merchandise will be considered at that time to be constructively transferred back into the zone in its previous zone status.

§ 146.62 Right to make entry.

Entry of merchandise under this subpart may be made only by the owner or purchaser or, when appropriately designated by the owner, purchaser, or consignee, by a licensed customhouse broker.

§ 146.63 Entry for consumption.

(a) *General.* The provisions of this section are applicable to the following merchandise:

(1) Privileged foreign merchandise that has not been mixed, combined, or repacked in a zone;

(2) Products of manipulation or manufacture in a zone composed of, or derived from, privileged foreign and domestic merchandise;

(3) Articles composed entirely of, or derived entirely from, non-privileged foreign and domestic merchandise;

(4) Articles composed in part of, or derived in part from, non-privileged foreign and domestic merchandise, and in part of or from privileged foreign and domestic merchandise; and

(5) Recoverable waste resulting from the manipulation or manufacture of foreign merchandise.

(b) *Entry documentation.* (1) *General.* When merchandise is removed from a zone for consumption, entry will be made on Customs Form 3461, Customs Form 7501, or other applicable Customs form and will be accompanied by the entry documentation, including invoices, as provided in parts 141 and 142 of this chapter. The importer of record shall submit any other supporting documents required by law or regulation that relate to the transaction removing the merchandise from the zone, and provide the information necessary to support the admissibility, the declared zone and dutiable value, quantity, and classification of the merchandise. If the declared zone and dutiable value are predicated on estimates or estimated costs furnished either in advance or at the time of entry, that information must be clearly stated in writing at the time an entry or entry summary is filed.

(2) *Subzone or noncontiguous zone site.* The district director may allow the importer of merchandise from a subzone or noncontiguous zone site approved under section 146.13 to file an entry on Customs Form 3461 for the estimated removal of merchandise during the calendar week. The Customs Form 3461 filed with the district director must be accompanied by a *pro forma* invoice or schedule showing the number of units of each type of merchandise to be removed during the week and the zone and dutiable value of each unit to be removed. Merchandise covered by an entry made under the provisions of this section will be considered to be entered, and may be removed, only when the district director has accepted the entry on Customs Form 3461. If actual removals will exceed the estimate for the week, the importer of record shall file a supplemental Customs Form 3461 to cover the additional units before their removal from the subzone or zone site. The procedure described in this subparagraph will not be allowed if the importer of record is required to file an entry summary at the time of entry as provided for in section 142.13 of this chapter.

(c) *Entry summary.*

(1) *Individual.* When entry is made on Customs Form 3461, the importer shall file an entry summary for the merchandise within 10 working days after the time of entry. The entry summary must be accompanied by any duties and taxes estimated to be due on the merchandise, and a statement of the quantity, zone status, zone

value, and dutiable value of the merchandise covered by the entry summary.

(2) *Weekly.* The importer of record in a subzone or noncontiguous zone site approved under section 146.13 shall file an entry summary for the merchandise described on the weekly entry and any supplemental entries, within 10 working days after presentation of the initial Customs Form 3461 for the calendar week. The entry summary must be accompanied by any duties and taxes estimated to be due on the merchandise, and a statement of the quantity, zone status, zone value, and dutiable value of the merchandise actually removed during the covered week, reconciled to the entry summary. Notwithstanding that a weekly entry may be allowed under paragraph (b), all merchandise will be dutiable in its actual condition at the time of its removal from the zone or zone site for consumption. When estimated removals exceed actual removals, that excess merchandise will not be considered to have been entered or constructively transferred to the Customs territory. Merchandise covered by a weekly entry and entry summary will be removed promptly from the zone or zone site, unless retained as domestic status merchandise as provided for in section 146.73(d).

(d) *Waiver of supporting documents.* The district director may waive presentation of an invoice and supporting documentation (except the statement required in paragraph (c)) with the entry or entry summary, if satisfied that presentation of those documents would be impractical, and the importer of record or operator either files invoices and supporting documentation with the district director or maintains and makes those records available for examination by Customs.

(e) *Removal for transportation to another port for consumption.*

(1) *Application for transfer.* When merchandise is to be transferred to Customs territory for transportation to another port for entry for consumption, an entry for transportation will be made on Customs Form 7512, bearing the notations in sections 146.66, and 146.71 when applicable, as an application for the transfer.

(2) *Condition for acceptance of entry for transportation.* The district director shall not accept an entry for transportation for products of manipulation or manufacture of privileged foreign merchandise until satisfied that the merchandise exists in the zone in its final form as described in the entry and that all other documents required to be submitted with the entry have been received.

(3) *Release of merchandise for transportation.* Upon acceptance of the entry, the district director shall release the merchandise to the operator for delivery to the bonded carrier.

(4) *Entry for consumption at port of destination.* An entry for consumption will be made at the port of destination on Customs Form 7501 or other approved Customs form by the person who has the right to make entry.

§ 146.64 Entry for warehouse.

(a) *Foreign merchandise.* Merchandise in privileged foreign status or composed in part of merchandise in privileged foreign status may not be entered for warehouse from a zone. Merchandise in nonprivileged foreign status containing no components in privileged foreign status may be entered for warehouse in the same or at a different port.

(b) *Zone-restricted merchandise.* Foreign merchandise in zone-restricted status may be entered for warehouse in the same or at a different port only for storage pending exportation, unless the Board has approved another disposition.

(c) *Time Limitation.* An entry for warehouse must be made within the time limit provided for in section 557(a), Tariff Act of 1930 (19 U.S.C. 1557(a)).

§ 146.65 Examination, Classification, Valuation, and Liquidation.

(a) *Examination.* Customs may examine any merchandise on its removal from a zone. All requirements and restrictions applicable to imported merchandise entered for consumption or warehouse, e.g., labelling, radiation standards, trademarks, quotas, visas, etc., also may apply to merchandise constructively transferred to the Customs territory from a zone.

(b) *Tariff classification.* (1) *Privileged foreign merchandise.* Privileged foreign merchandise provided for in this section will be subject to tariff classification according to its condition and quantity, at the rate of duty and tax in force on the date of filing, in complete and proper form, the application for privileged status. (2) *Nonprivileged foreign merchandise.* Nonprivileged foreign merchandise provided for in this section will be subject to tariff classification in accordance with its character and condition at the time the entry or entry summary is filed with Customs.

(c) *Valuation.*

(1) *Total zone value.* The total zone value of merchandise provided for in this section will be determined in accordance with the principles of valuation contained in sections 402 and 500 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a, 1500). Generally, the total zone value would be that price paid or payable to the zone seller in the transaction that caused the merchandise to be removed from the zone. Where there is no price paid or payable, the total zone value would be the cost of all materials and zone processing costs related to the merchandise removed from the zone.

(2) *Dutiable value.* The dutiable value of merchandise provided for in this section will reflect the cost or value of components having a foreign status, exclusive of any cost of processing or fabrication incurred in the zone, general expenses and profit, international freight and insurance costs, and United States inland freight

costs. Generally, the dutiable value would be, or represent, the price paid or payable by the zone operator in the transaction that caused the merchandise or component to be admitted into a zone. Where there is no price paid or payable, or reasonable representation of that cost, the dutiable value may be determined by excluding from the total zone value any cost of processing or fabrication, general expenses and profit, international freight and insurance costs, and United States inland freight costs. The dutiable value of recoverable waste or scrap from a zone operation will be the price paid or payable to the zone seller in the transaction that caused the recoverable waste or scrap to be removed from the zone. An allowance in the dutiable value of zone merchandise may be made by the district director in accordance with the provisions of subparts B and C of part 158 of this chapter, relating to damaged or defective merchandise and casualty while merchandise is in Customs custody.

(d) *Liquidation.* (1) *General.* The entry provided for in this section will be liquidated in accordance with the provisions of part 159 of this chapter.

(2) *Extension to update cost data.* When the declared value of the merchandise is based on an estimate, the importer of record may request an extension of liquidation pending the presentation of updated or actual cost data. A request for an extension may be granted at the discretion of the district director. If the extension is granted, the importer of record shall submit the updated or actual cost data to the district director, within 90 days after the close of the accounting year.

§ 146.66 Entry for transportation to another port.

The person making entry for merchandise to be transported to another port in accordance with any provision of this subpart shall note all copies of the entry to state that the merchandise covered by the entry is foreign-trade zone merchandise; the number of the zone from which the merchandise was removed; and the zone status of the merchandise.

§ 146.67 Transfer from one zone to another.

(a) *Domestic merchandise.* The transfer of domestic merchandise from one zone to another is not subject to Customs control, except that the removal of the merchandise from the first zone and its admission into the zone of destination will be in accordance with sections 146.39, 146.43, 146.72, and 146.73.

(b) *Other merchandise.*

(1) *At the same port.* A transfer of merchandise to another zone with a different operator at the same port (including a consolidated port) will be by a licensed cartman under an entry for immediate transportation on Customs Form 7512 or other appropriate form with a Customs Form 214 filed at the destination zone. A transfer of merchandise between zone sites at the same port (including a

consolidated port) having the same operator may be made under a local control system approved by the district director wherein any loss of merchandise between sites will be treated as if the loss occurred in the zone.

(2) *At a different port.* A transfer of merchandise from a zone at one port of entry to a zone at another port will be by bonded carrier under an entry for immediate transportation on Customs Form 7512. All copies of the entry must bear a notation in addition to those required in section 146.66 that the merchandise is being transferred to another zone designated by its number. A transfer of merchandise from the first zone into Customs territory and its admission into the zone of destination will be in accordance with sections 146.32 and 146.66, respectively.

(c) *Forwarding of merchandise history; documentation.* When merchandise is transferred under the provisions of this section, the operator of the removal zone shall provide the operator of the destination zone with the documented history of the merchandise being transferred.

(1) The following documentation must accompany merchandise maintained under a lot inventory control system:

(i) A copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise and all components thereof;

(ii) A copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise or its components; and

(iii) A copy of any Customs Form 216 to manipulate or manufacture the merchandise.

(2) The following documentation must accompany merchandise not under a lot system, and not manufactured in a zone:

(i) A copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise as attributed under the particular zone inventory method;

(ii) A copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise as attributed under the particular zone inventory method; and

(iii) A copy of any Customs Form 216 to manipulate the merchandise as attributed under the particular zone inventory method.

(3) If the documents specified in subparagraph (c)(2) are not presented, the operator of the removal zone shall submit the following:

(i) A statement of the zone value, dutiable value, quantity, description, unique identifier, and zone status (showing any changes of status after admission and whether the merchandise was manipulated so as to change its tariff classification) of all the merchandise in the shipment covered by the transportation entry; and

(ii) A certification that the statement in (3)(i) above is true and that the information contained therein is contained in the inventory control and recordkeeping system of the removal zone.

(4) The following documentation must accompany merchandise not under a lot system, but manufactured in a zone:

(i) A statement by the removal zone operator of the zone value, dutiable value, quantity, description, unique identifier, and zone status of all the merchandise (and components thereof, where applicable) covered by the transportation entry with a certification by the operator that the information is true and is reflected in the inventory control and recordkeeping system of the removal zone. The statement will also show any change in zone status in the removal zone, and whether the merchandise has been manufactured or manipulated in the zone so as to change its tariff classification; and

(ii) A certification by the operator of the removal zone that the statement in (4)(i) above is true and the information therein is contained in the inventory control and recordkeeping system of the zone.

(5) The operator of the removal zone shall transmit the historical documentation of the merchandise within 2 working days after it has been delivered to the bonded carrier for transportation. The documentation will be referenced to the I.T. number covering the merchandise.

(d) *Arrival at destination zone.* Upon arrival of the merchandise at the destination zone, it will be admitted under the procedure provided for in section 146.32, except that no invoice or Customs examination will be required. When the historical documentation is received, the operator of the destination zone shall associate it with the Customs Form 214 for admission of the merchandise, and incorporate that information into the zone inventory control and recordkeeping system.

§ 146.68 Removal for exportation.

(a) *Direct exportation.* Any merchandise in a zone may be exported directly therefrom (without transfer into Customs territory) upon compliance with the procedures of this section, except as provided in section 146.72.

(1) *Application.* The operator shall sign and submit to the district director, in triplicate, an application for direct exportation which must include:

(i) The proposed date of exportation;

(ii) The identification of the carrier;

(iii) The destination of the shipment; and

(iv) Identification of the merchandise by zone storage location, lot number or unique identifier, marks and numbers of packages, description, quantity, and zone status. If a form of tally, prepared and signed by the operator for its own purposes contains the required information, it may be accepted by the district director in lieu of the application provided for in this paragraph.

(2) *Permit of exportation.* If the district director approves the application, the original will be stamped to serve as a permit of exportation. The original and one copy will be returned to the opera-

tor. No document other than the permit of exportation will be required to release the merchandise to the operator for lading aboard the exporting carrier.

(b) *Immediate exportation.* Each transfer of merchandise other than domestic status merchandise, to the Customs territory for exportation at the port where the zone is located, will be made under an entry for immediate exportation on Customs Form 7512. The entry must describe the merchandise as foreign-trade zone merchandise, specify the zone status, and bear any special notation required in sections 146.66 and 146.71. The person filing the export entry shall obtain an export bond on Customs Form 301 containing the bond conditions provided for in section 113.62 of this chapter.

(c) *Transportation and exportation.* Each transfer of merchandise other than domestic, to the Customs territory for transportation to and exportation from a different port, will be made under an entry for transportation and exportation on Customs Form 7512, and must bear the notations as required in sections 146.66 and 146.71. No exportation bond will be required of the person who files the transportation and exportation entry. The bonded carrier will be responsible for exportation of the merchandise in accordance with law and regulation.

(d) *Export declaration.* Every exporter of merchandise of any zone status shall submit a Shipper's Export Declaration as required by the regulations of the Bureau of the Census, Department of Commerce (see 15 CFR Part 30).

(e) *Merchandise produced or manufactured in a zone returned to Customs territory after exportation.* Merchandise produced or manufactured in a zone and exported without having been transferred to Customs territory other than for exportation or for transportation and exportation will be subject, on its return to Customs territory, to the duties and taxes applicable to like articles of wholly foreign origin, unless it is conclusively established that it was produced or manufactured exclusively with the use of domestic merchandise. The identity of the domestic merchandise must have been maintained in accordance with the provisions of this part, in which case that merchandise will be subject to the provisions of schedule 8, part 1, Tariff Schedules of the United States (19 U.S.C. 1202).

146.69 Removal for transportation or exportation; subzone or noncontiguous zone site.

(a) *Weekly permit.* The district director may allow a person with the right to make entry at a subzone or noncontiguous zone site, with an application for special procedures approved under section 146.13, to file an application for a weekly permit to enter and release merchandise during a calendar week for exportation, transportation, or transportation and exportation. The application will be on Customs Form 7512 stating at the top the words "Application for Weekly Zone Permit," and will be filed with the district director. The application must be accompanied by a *pro forma* invoice or

schedule like that required in section 146.63(b)(2). If actual removals will exceed the estimate for the week, the person with the right to make entry shall file a supplemental Customs Form 7512 to cover the additional merchandise to be removed from the subzone or zone site. No merchandise covered by the weekly permit may be removed before approval of the application by the district director.

(b) *Individual entries.* After approval of the application for a weekly permit by the district director, the person with the right to make entry will be authorized to execute individual Customs Form 7512 for exportation, transportation, or transportation and exportation of the merchandise covered by the permit. Upon removal of the merchandise, the operator shall obtain a receipt from the carrier to assure its assumption of liability under the carrier's or cartman's bond. Customs will consider the time of entry to be when the removing carrier signs the receipt for the merchandise. The operator shall give the bonded carrier a copy of the individual Customs Form 7512 and the destination copy (Customs Form 7512-C), as provided for in section 18.2(c) of this chapter. The operator also shall ensure that the district director receives a copy of the Customs Form 7512 and the origin copy (Customs Form 7512-C) by the end of the next working day after the carrier has receipted for the merchandise.

(c) *Statement of merchandise entered.* The person with the right to enter merchandise under an approved weekly permit shall file with the district director, by the close of business on the second working day of the week following the week designated on the permit, a statement of the merchandise entered under that permit. The statement must list each Customs Form 7512 by its unique I.T. number, and will provide a reconciliation of the quantities on the weekly permit with the manifested quantities on the individual Customs Forms 7512 submitted to Customs, as well as an explanation of any discrepancy.

§ 146.70 Supplies, equipment, and repair material for vessels or aircraft.

(a) *Applicability.* Any merchandise which may be withdrawn duty and tax-free in Customs territory under section 309 or 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), and sections 10.59 through 10.65 of this chapter may similarly be withdrawn from a zone, regardless of its zone status, under those statutes and regulations. Domestic merchandise is not subject to the provisions of this section and may be withdrawn from a zone in accordance with the provisions of section 146.72.

(b) *Merchandise for delivery within zone.* The withdrawal of merchandise provided for in paragraph (a) for delivery within the zone where withdrawn to a qualified vessel or aircraft, or as ground equipment of a qualified aircraft, will be on Customs Form 7512 (see section 10.60 of this chapter).

(1) *Who may make entry to withdraw.* The entry to withdraw merchandise under this section will be made by the person specified in section 146.62, except when the withdrawal is made under the provisions of sections 10.60 (b) and (c) of this chapter.

(2) *Supporting documents.* The entry must be supported by an application for lading in the same form as the application in section 146.68(a)(1), and a bond on Customs Form 301 containing the bond conditions provided for in section 113.64 of this chapter.

(3) *Release of articles.* Upon acceptance of the application and bond, the district director shall release the merchandise to the operator for delivery to the qualified vessel or aircraft for lading in the zone.

(c) *Merchandise for delivery outside zone.* The withdrawal of merchandise provided for in paragraph (a) for delivery at a place outside the zone in the same or at a different port to a qualified vessel or aircraft, or as ground equipment of a qualified aircraft, will be on Customs Form 7512 (See section 10.60 of this chapter). The withdrawal must contain the notations required in sections 146.66 and 146.71.

(1) The person making the withdrawal and the procedure to be followed are described in paragraph (b), except that no application for lading need accompany the Customs Form 7512.

(2) Upon acceptance of the withdrawal, the district director shall release the merchandise to the operator for delivery to the bonded cartman, lighterman, or carrier, for transportation through the Customs territory to the qualified lading vessel or aircraft.

§ 146.71. Transfer of zone-restricted merchandise into Customs territory.

(a) *Type of entry.* Zone-restricted merchandise may be removed to Customs territory only for entry for exportation, for entry for transportation and exportation, for warehousing pending exportation, for destruction (except destruction of distilled spirits, wines and fermented malt liquors), for transfer from one zone to another, or for delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under section 309 or 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), unless the Board has ruled that the return of the merchandise to Customs territory for domestic consumption is in the public interest. With Board approval, that merchandise may be entered for consumption, for warehousing, for immediate transportation without appraisement, or under any other provision of the Customs laws, unless the Board has specified the form of entry to be made.

(b) *Removal to Customs territory for consumption.* If the return of zone-restricted merchandise to Customs territory for consumption has been ruled by the Board to be in the public interest, the entry shall be endorsed by the district director to show the authority under which it was made, and that the merchandise is subject to

the provisions of schedule 8, part 1, Tariff Schedules of the United States (19 U.S.C. 1202).

(c) *Removal to Customs territory for warehousing.* Zone-restricted merchandise may be transferred from a foreign-trade zone to a Customs bonded warehouse for storage pending exportation. The warehouse entry, Customs Form 7502, shall be endorsed by the district director to show that the merchandise may not be withdrawn for consumption. In the case of zone-restricted merchandise transported in bond to another port for warehousing and exportation, Customs Form 7512 shall be endorsed by the district director to show that the merchandise is foreign-trade zone merchandise in zone-restricted status, which shall be entered for warehouse, with proper endorsement on Customs Form 7502, and which may not be withdrawn for consumption. Zone-restricted merchandise transferred from a foreign-trade zone to a Customs bonded warehouse may not be manipulated, except for packing or unpacking incidental to exportation. Pursuant to section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), any merchandise placed in a Customs bonded warehouse may not remain in the warehouse after 5 years from the date of importation and no merchandise may be placed in a Customs bonded warehouse after 5 years from the date of importation.

(d) *Removal from zone for other purposes.* Upon acceptance of an entry or withdrawal for zone-restricted merchandise for any purpose other than that described in a Board order, the entry shall be endorsed by the person making entry to show that actual exportation of the merchandise is required by the fourth proviso to section 3 of the Act, as amended, or the entry endorsed to require delivery to a qualified vessel or aircraft, under section 309 or 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), in addition to the notations required in section 146.66.

§ 146.72 Transfer of domestic merchandise into Customs territory.

(a) *Description of transaction.* Except as provided for in paragraph (d), when domestic merchandise which has not been mixed, combined or repacked in a zone with merchandise having a different zone status is to be transferred from the zone to Customs territory, the operator shall sign and submit to the district director, in triplicate, a description of the proposed transaction which must include:

- (1) The proposed date of transfer;
- (2) The identification of the carrier;
- (3) The destination of the shipment; and

(4) Identification of the merchandise by zone storage location, lot number or unique identifier, marks and numbers of packages, description, quantity, and zone status. If a form of tally prepared and signed by the operator for its own purposes contains the necessary

information, it may be accepted in lieu of the description required in this paragraph.

(b) *Permit of delivery.* If the transfer is approved by the district director, the original of the description will be so stamped to serve as a permit of delivery. The original and one copy will be returned to the operator. No document other than the permit of delivery will be required to release the merchandise to the operator and authorize its transfer into Customs territory.

(c) *Blanket submission.* The district director may accept from the operator a blanket submission describing all domestic merchandise transferred to the Customs territory in one day by the same zone tenant, on the next working day after the merchandise was physically removed from the zone. If the merchandise is subsequently found to be, or to include, merchandise in another zone status, the district director may demand redelivery of that merchandise to the zone and assess liquidated damages and penalties as provided for in law and regulation.

(d) *When no permit required.* Merchandise in domestic status which has been admitted under section 146.14, and which has not been mixed or combined with merchandise of another status, may be removed from the zone without Customs permit using prudent business procedures.

§ 146.73 Release and removal of merchandise from zone.

(a) *In general.* Except as provided for in section 146.72 (c) or (d), no merchandise will be removed from a zone without a Customs permit on the appropriate entry or withdrawal form or other document as required in this part. The district director may authorize a removal under a permit without physical supervision of or examination by a Customs officer. Upon issuance of a permit, the district director will authorize delivery of the merchandise only to the operator, who then may release the merchandise to the importer or carrier.

(b) *Liability for discrepancy.* When a removal is not physically supervised by a Customs officer, the operator will be relieved of responsibility only for the merchandise in a zone in the condition and quantity as shown on the entry, withdrawal, or other appropriate form. The operator will be relieved of responsibility only if it receives the signed receipt on the removal document of the importer or the carrier named in that document. The responsibility of the operator may be adjusted by any discrepancy report made jointly by the operator and the bonded cartman, lighterman, or carrier, or the importer, and signed by the above or an authorized representative within 15 days after removal of the merchandise from the zone. Any adjustment must be noted on the permit copy of the entry, withdrawal, or other removal document. A copy of any joint report of discrepancy must be submitted to the district director within 2 working days of signing by the parties.

(c) *Time limit for removal.* Merchandise for which a Customs permit for removal has been issued, if not retained in or readmitted to a zone under paragraph (d) of this section, must be removed from the zone within 5 working days of issuance of the permit. The district director, upon request of the operator, may extend that period for good cause. Merchandise awaiting removal within the required time limit will not be further manipulated or manufactured in the zone, but will be segregated or otherwise identified by the operator as merchandise that has been constructively transferred to the Customs territory. The district director shall order merchandise not removed from the zone in the allotted time, to be carried away by a Government cartman to a location designated by the district director at the risk and expense of the importer named in the entry, withdrawal, or other removal document as required in this part.

(d) *Retention in zone of merchandise entered for consumption.* (1) Merchandise which has been entered for consumption may be retained in the same zone, without physical removal therefrom, in domestic status upon application to and permit granted by the district director for admission. The application must be filed within 5 working days after the entry of the merchandise, under the procedure set forth in section 146.39(b). An application for multiple entries will be submitted within 5 working days of the date of the earliest entry of merchandise covered by the application. The application will clearly identify the merchandise to be retained and state that the merchandise was entered from the same zone as that of retention, and list the entry number(s) and date(s). Merchandise which has undergone a change from a foreign status to domestic status in a zone, whether or not physically removed from that same zone to effect the change, will not be further processed in the zone. "Further processing," for the purposes of this section, includes machining, grinding, drilling, threading, punching, forming, plating, bolting, welding, painting, assembling, and like operations.

(2) A component of merchandise which has been entered, but not physically removed from a zone will be restored to its last zone status, provided the district director determines that the component was included in the entry through clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of the law. Such an error, including that in appraisement of any entry or liquidation due to the above circumstances, may be corrected pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), in accordance with the procedures described in part 173 of this chapter. If the district director decides there has been no error, mistake, or inadvertence, or that the information was not timely provided, the component will be considered as overage and subject to the provisions of section 146.55(d).

**SUBPART G—LIQUIDATED DAMAGES; PENALTIES; SUSPENSION;
REVOCATION**

§ 146.81 Liquidated damages.

(a) *Compliance with law and regulation.* The principal named on Customs Form 301 shall comply with:

(1) The law and regulations relating to admission, zone status, storage, exhibition, manipulation, manufacture, destruction, and removal of merchandise to, in, or from a zone; and

(2) The regulations contained in this part concerning inventory control and recordkeeping systems, and their maintenance, covering merchandise in a zone.

(b) *Payment of duty and tax.* The principal and surety shall pay liquidated damages equal to one time the value (determined by Customs) of merchandise other than domestic merchandise for which no permit for admission is required (three times the value for restricted and alcoholic merchandise), which is discovered to be missing from a zone or cannot be accounted for in a zone. Such liquidated damages will be in addition to the full amount of any duties, taxes, and/or charges due, or estimated to be due, on the merchandise. The duty, tax, and/or charge in question will be determined solely by Customs.

(c) *Default not relating to merchandise.* If the principal defaults with respect to any of the terms or conditions of the Customs Form 301 provided for in section 113.73 of this chapter or the regulations in this part, not relating to merchandise, the principal and surety shall pay as liquidated damages an amount to be determined by the district director, but not to exceed \$200 for each and every default, subject to guidelines and advice from Customs Headquarters.

(d) If the principal defaults on payment of the annual fee when due, the principal and surety agree to pay on demand by the district director as liquidated damages an amount equal to the annual fee due but not paid, and an amount equal to one percent of the annual fee for each of the first 7 days the annual fee is in arrears, two percent of the annual fee for each of the succeeding 7 days the annual fee is in arrears, and three percent of the annual fee for each day thereafter in which the annual fee is in arrears.

(e) *Other agreement.* The principal and surety shall:

(1) Exonerate the United States and its officers from any risk, loss, or expense arising from the operation of a zone; and

(2) Pay the compensation and expenses of any Customs officer, as required by law or regulation.

§ 146.82 Penalties.

(a) *Amount.* Upon violation of the Act, or any regulation issued under the Act, by the grantee, or any officer, agent, or employee thereof, the person responsible for or permitting the violation shall be subject to a fine of not more than \$1,000. Each day during which a violation continues will constitute a separate offense. Liquidated

damages, where applicable, will be imposed in addition to the fine (19 U.S.C. 81s).

(b) *Review.* All fines assessed by the district director under this section will be reviewed by the Director, Entry Procedures and Penalties Division, Headquarters, to determine whether further action against the grantee or operator, such as suspension or a recommendation for revocation of the grant, is warranted.

§ 146.83 Suspension.

(a) *For cause.* The district director may suspend for cause the activated status of a zone or a zone site, or the privilege to receive, manufacture, manipulate, exhibit, destroy, or remove merchandise, at a zone for a period not to exceed 30 days, except that the district director may continue the suspension in any case where the operator fails to rectify, or fails to make a good faith effort to rectify the cause of the suspension. An action to suspend will be taken in accordance with the procedure set forth in paragraph (b) of this section if:

(1) The approval of the application to bond the zone was obtained through fraud or the misstatement of a material fact;

(2) The operator neglects or refuses to obey any proper order of a Customs officer or any Customs order, rule, or regulation relating to the operation or administration of a zone;

(3) The operator, or any officer of a corporation which has been granted the right to operate a zone, is convicted of or has committed an act that would constitute a felony, or would constitute a misdemeanor involving theft, smuggling, or a theft-connected crime;

(4) The operator fails to furnish a current list of names, addresses, or other information as required by section 146.7;

(5) The operator does not provide a secure facility or properly safeguard merchandise within a zone;

(6) The operator fails to pay within 30 days after the due date all annual fees associated with the operation of a zone;

(7) The bond required by section 146.6(b) is determined to be sufficient in amount or lacking sufficient surety, and a satisfactory new bond with good and sufficient surety is not furnished within a reasonable time;

(8) The operator, or any officer, agent, or employee of the operator, discloses to an unauthorized person proprietary information on a Customs form or contained in the inventory control and record-keeping system; or (9) The inventory control and recordkeeping system is impaired to the point where the identity of merchandise in zone status has been lost and cannot be reestablished without a suspension of zone operations.

(b) *Procedure.* (1) *Notice.* The district director may at any time serve notice in writing upon an operator to show cause why its right to continue operation of a zone should not be suspended as provided for in paragraph (a) of this section. The notice will advise

the operator of the grounds for the proposed action and will afford the operator an opportunity to respond in writing within 15 days after receipt of the notice. Thereafter, the district director shall consider the allegations and any response made by the operator and issue a decision, unless the operator requests a hearing in the matter.

(2) *Hearing.* If the operator requests a hearing, it will be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the operator's request. The operator may be represented by counsel at the hearing, and any evidence and testimony of witnesses in the proceeding, including substantiation of the allegations and the response thereto will be presented, with the right of cross-examination to both parties. A stenographic record of the proceeding will be made and a copy will be delivered to the operator. At the conclusion of the hearing, the hearing officer shall transmit promptly all papers and the stenographic record of the hearing to the regional commissioner of the region in which the zone is located, together with a recommendation for final action.

(3) *Decision of regional commissioner.* Within 10 calendar days after delivery to the operator of a copy of the stenographic record of the hearing, the operator may submit to the regional commissioner in writing any additional views or arguments. The regional commissioner thereafter shall render a decision in writing, stating reasons therefor. That decision will be served on the operator and will be considered the final Customs administrative action in the case.

§ 146.84 Revocation of zone grant.

(a) *Recommendation of district director.* The district director may at any time recommend to the Board that the privilege of establishing, operating, and maintaining a zone or subzone under Customs jurisdiction be revoked for willful and repeated violations of the Act (19 U.S.C. 81r). If the district director believes that a substantial question of law exists as to whether willful and repeated violations of the Act have occurred, that officer should request internal advice under the provisions of part 177 of this chapter from the Director, Carriers, Drawback and Bonds Division, Headquarters. A recommendation to the Board that a zone or subzone grant be revoked does not preclude, and may be in addition to, any liquidated damages, penalty, or suspension for cause.

(b) *Decision of the Board.* The procedure for revocation of a grant, the decision of the Board, and appeal, is covered by the provisions of the Act and title 15, chapter IV, part 400, Code of Federal Regulations.

CONFORMING AMENDMENTS

Parts 18, 24, 112, 141, 144, and 191

To conform the Customs Regulations to the changes made by the proposed revision of Part 146, Customs Regulations, it is proposed to amend Parts 18, 24, 112, 141, 144, and 191 in the following manner:

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

It is proposed to amend section 18.2, Customs Regulations, in the following manner:

1. By revising the heading to paragraph (a)(1) to read "*Merchandise other than from warehouse or foreign-trade zone delivered to bonded carrier.*"

2. By removing the words "subparagraph (2)" in the first sentence and inserting, in their place, the words "subparagraphs (2) and (3)."

3. By adding a new paragraph (a)(3) to read as follows:

§ 18.2 Receipt by carrier; manifest.

(a) * * *

(3) *Merchandise delivered from foreign trade zone.* When merchandise is delivered from a foreign-trade zone to a bonded carrier for transportation in bond, supervision of lading will be accomplished in accordance with the procedure set forth in section 146.73(a) of this chapter.

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

It is proposed to amend the first sentence of paragraphs (c) and (f) of section 24.13, Customs Regulations, to insert the words "a foreign-trade zone operator," before the words "and bonded warehouse proprietors" and "a Customs bonded warehouse proprietor," respectively.

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

It is proposed to amend the last sentence of section 112.12(b)(3), Customs Regulations, to read as follows:

§ 112.12 Application for authorization.

* * * * *

(b) *Special requirements.*

* * * * *

(3) *Private carriers.* * * * If the private carrier is the proprietor of one or more Customs bonded warehouses or bonded container

stations, or the operator of a foreign-trade zone, to which imported merchandise will be transported, he shall accompany the bond and copies of the bond by a statement showing the location of each warehouse and container station, or zone.

* * * * *

PART 141—ENTRY OF MERCHANDISE

It is proposed to revise section 141.111(d), Customs Regulations, to read as follows:

§ 141.111 Carrier's release order.

* * * * *

(d) *Qualified release order.* In the case of merchandise which is entered for warehousing, for transportation in bond, for exportation, or is to be admitted to a foreign-trade zone, the release order may be qualified as follows:

(1) "For transfer to the bonded warehouse designated in the warehouse entry," if the merchandise is entered for warehousing;

(2) "For transfer to the bonded carrier designated in the transportation entry," if the merchandise is entered for transportation in bond;

(3) "For transfer to the carrier designated in the export entry," if the merchandise is entered for exportation; or

(4) "For transfer to the foreign-trade zone designated in Customs Form 214," if the merchandise is to be admitted to a foreign-trade zone.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. It is proposed to revise section 144.36(g), Customs Regulations, to read as follows:

§ 144.36 Withdrawal for transportation.

* * * * *

(g) *Procedure at destination.* Upon arrival at destination, the merchandise may be:

(1) Entered for rewarehouse in accordance with section 144.41;

(2) Entered for combined rewarehouse and withdrawal for consumption in accordance with section 144.42;

(3) Exported in accordance with paragraph (h) of this section;

(4) Forwarded to another port or returned to the port of origin in accordance with section 18.5(c) or (d) of this chapter; or

(5) Admitted to a foreign-trade zone as provided in section 146.32 of this chapter.

* * * * *

2. It is proposed to amend section 144.37, Customs Regulations, by adding a new paragraph (g), to read as follows:

§ 144.37 Withdrawal for exportation.

(g) *Exportation at a foreign-trade zone.* Merchandise may be withdrawn for exportation at a foreign-trade zone in the same or at a different port. The merchandise will be considered exported upon admission to a zone in zone-restricted status, as provided in section 146.44(c) of this chapter.

PART 191—DRAWBACK

1. It is proposed to amend section 191.162, Customs Regulations, by removing reference to "section 146.25," and inserting, in its place reference to "section 146.44."

2. It is proposed to revise sections 191.163 (c) and (d), Customs Regulations, to read as follows:

§ 191.163 Articles manufactured or produced in the United States.

(c) *Action of the district director on the notice of transfer.* The district director shall assign a number to each notice of transfer, return one copy to the transferor and forward another copy to the zone operator at the foreign-trade zone.

(d) *Action of foreign-trade zone operator.* After articles have been received in the zone, the zone operator at the zone shall certify on a copy of the notice of transfer the receipt of the articles (see section 191.164(d)(2)) and forward the notice to the transferor or the person designated by the transferor. The transferor shall verify that the notice has been certified before filing it with the drawback entry.

3. It is proposed to revise paragraphs (b) and (c) of section 191.164, Customs Regulations, to read as follows:

§ 191.164 Merchandise transferred from continuous Customs custody.

(b) *Drawback entry.* Before the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the district director a direct export entry on Customs Form 7512 in duplicate. The district director shall forward one copy of Customs Form 7512 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7512 the receipt of the merchandise (see paragraph (d)(2)) and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3), the transferor shall resubmit

Customs Form 7512 to the district director in place of the bill of lading required by section 191.136.

4. It is proposed to revise paragraphs (b) and (c) of section 191.165, Customs Regulations, to read as follows:

§ 191.165 Same condition drawback merchandise and merchandise not conforming to sample or specifications or shipped without the consent of the consignee.

(b) *Drawback entry.* Before transfer of the merchandise to a foreign-trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the district director an entry on Customs Form 7539 in duplicate. The district director shall forward one copy of Customs Form 7539 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7539 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3), the transferor shall resubmit Customs Form 7539 to the district director in place of the bill of lading required by section 191.136.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: June 29, 1984.

JOHN M. WALKER, JR.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, July 16, 1984 (49 FR 28695)]

PARALLEL REFERENCE TABLE

[This table shows the relationship of sections in revised Part 146 to superseded Part 146]

Revised section	Superseded section
146.0.....	146.0
146.1(a).....	146.1(a)
146.1(b).....	New
146.1(c).....	New
146.1(d).....	146.1(b)
146.1(e).....	146.1(c)
146.1(f).....	New
146.1(g).....	146.1(d)
146.1(h) (1), (2).....	146.1(e) (1), (2)
146.1(h) (3), (4).....	New

PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in revised Part 146 to superseded Part 146]

Revised section	Superseded section
146.1(i).....	New
146.1(j).....	New
146.1(k).....	New
146.1(l).....	146.1(f)
146.2.....	146.2
146.3(a).....	146.3
146.3(b).....	New
146.4.....	New
146.5.....	146.4
146.6.....	New
146.7.....	New
146.8.....	New
146.9.....	146.5
146.10.....	146.6
146.11 (a), (b), (c).....	146.7 (a), (b), (c)
146.11 (d).....	New
146.12.....	146.8
146.13.....	New
146.14.....	New
146.15.....	New
146.16.....	New
146.17.....	New
146.21.....	New
146.22.....	New
146.23.....	New
146.24.....	New
146.25.....	New
146.26.....	New
146.31.....	146.11
146.32(a).....	146.12(a)
146.32(b)(1).....	New
146.32(b)(2).....	146.12(b)(1)(ii)
146.32(b)(3).....	146.12(b)(1)(i)
146.32(b)(4).....	146.12(b)(2)
146.32(b)(5).....	New
146.32(c) (1), (2) & 4.....	146.12(c) (1), (2), (3)
146.32(c)(3).....	New
146.32(d).....	New
146.33.....	146.13
146.34.....	146.14
146.35.....	New
146.36.....	New
146.37.....	New
146.38.....	146.15
146.39.....	New
146.40.....	New

PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in revised Part 146 to superseded Part 146]

Revised section	Superseded section
146.41 (a), (b), (c)	146.21 (a), (b), (c)(1), (2)
146.41(d)	146.21(c)(3)(i), (v)
146.41(e)	146.21(c)(3)(iv)
146.41(f)	146.21(d)
146.42	146.23
146.43	146.22, 146.24
146.44 (a), (b), (c), (d)	146.25 (a), (b), (c), (d)
146.51	146.31(a), (b)
146.52(a)(1)	146.32(a)
146.52(a)(2)	New
146.52(b)(1)	146.32(b)
146.52(b)(2)	146.21(f)
146.52(c)	146.32(c)
146.52(d)(1)	146.32(d)(1)
146.52(d)(2)	New
146.53(a), (b)	146.33(a), (b)
146.53(c)	New
146.54	New
146.55(a) (1), (3), (4), and (b)	146.31(c)
146.55(a)(2), (c), (d), and (e)	New
146.61	146.48(b)
146.62	146.45(b)(2), (c)(2)
146.63(a)(1)	146.45(a)
146.63(a)(2)	146.46(a)
146.63(a)(3)	146.48(a)(1)
146.63(a)(4)	146.48(a)(2)
146.63(a)(5)	146.48(a)(3)
146.63(b)(1)	146.45(b)(1), 146.46(b)(1), 146.48(c), (d)
146.63(b)(2)	New
146.63(c)	New
146.63(d)	New
146.63(e)(1)	146.45(c)(1), 146.46(c)
146.63(e)(2)	146.46(b)(2)
146.63(e)(3)	146.45(c)(4)
146.63(e)(4)	146.45(c)(2)
146.64(a)	146.48(c)
146.64(b)	146.47(e)(4)
146.64(c)	New
146.65(a)	New
146.65(b)(1)	146.21(c)(3)(i), 146.45(b)(4), (c)(6)
146.65(b)(2)	146.48(e)(1)
146.65(c)	146.48(e)(2)
146.65(d)(1)	146.48(f)
146.65(d)(2)	New
146.66	New
146.67(a)	146.43(a)

PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in revised Part 146 to superseded Part 146]

Revised section	Superseded section
146.67(b)(1)	New
146.67(b)(2)	146.43(b)(1)
146.67(c)	146.43(b)(2)
146.67(d)	New
146.68(a)	146.41
146.68(b), (c)	146.45(d), 146.46(d)
146.68(d)	New
146.68(e)	146.46(e)
146.69	New
146.70	146.42
146.71(a)	146.47(a)
146.71(b)	146.47(e)(3)
146.71(c)	146.47(e)(4)
146.71(d)	146.47(e)(3)
146.72(a), (b)	146.44(a), (b)
146.72(c)	New
146.72(d)	New
146.73	New
146.81	New
146.82	New
146.83	New
146.84	New

PARALLEL REFERENCE TABLE

[This table shows the relationship of sections in superseded Part 146 to revised Part 146]

Old section	New section
146.0	146.0
146.1(a)	146.1(a)
146.1(b)	146.1(d)
146.1(c)	146.1(e)
146.1(d)	146.1(g)
146.1(e) (1), (2)	146.1(h)(1), (2)
146.1(f)	146.1(1)
146.2	146.2
146.3	146.3(a)
146.4	146.5
146.5	146.9
146.6	146.10
146.7 (a), (b), (c)	146.11 (a), (b), (c)
146.8	146.12
146.11	146.31
146.12(a)	146.32(a)

PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in superseded Part 146 to revised Part 146]

Old section	New section
146.12(b)(1)(i).....	146.32(b)(3)
146.12(b)(1)(ii).....	146.32(b)(2)
146.12(b)(2).....	146.32(b)(4)
146.12(c) (1), (2), (3).....	146.32(c) (1), (2) & (4)
146.13.....	146.33
146.14.....	146.34
146.15.....	146.38
146.21 (a), (b), (c)(1)(2).....	146.41 (a), (b), (c)
146.21(c)(3)(i), (v).....	146.41(d); 146.65(b)(1)
146.21(c)(3) (ii), (iii).....	Removed
146.21(c)(3)(iv).....	146.41(e)
146.21(d).....	146.41(f)
146.21(e).....	Removed
146.21(f).....	146.52(b)(2)
146.22.....	146.43
146.23.....	146.42
146.24.....	146.43
146.25.....	146.44
146.31(a)(b).....	146.51
146.31(c).....	146.55(a) (1), (3), (4), & (b)
146.32(a).....	146.52(a)(1)
146.32(b).....	146.52(b)(1)
146.32(c).....	146.52(c)
146.32(d)(1).....	146.52(d)(1)
146.32(d)(2).....	Removed
146.33.....	146.53 (a), (b)
146.41.....	146.68(a)
146.42.....	146.70
146.43(a).....	146.67(a)
146.43(b)(1).....	146.67(b)(2)
146.43(b)(2).....	146.67(c)
146.44.....	146.72 (a), (b)
146.45(a).....	146.63(a)(1)
146.45(b)(1).....	146.63(b)(1)
146.45(b)(2).....	146.62
146.45(b)(3).....	Removed
146.45(b)(4).....	146.65(b)(1)
146.45(b)(5).....	Removed
146.45(c)(1).....	146.63(e)(1)
146.45(c)(2).....	146.62; 146.63(e)(4)
146.45(c)(3).....	Removed
146.45(c)(4).....	146.63(e)(3)
146.45(c)(5).....	Removed
146.45(c)(6).....	146.65(b)(1)
146.45(d).....	146.68(b)
146.46(a).....	146.63(a)(2)

PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in superseded Part 146 to revised Part 146]

Old section	New section
146.46(b)(1)	146.63(b)(1)
146.46(b)(2)	146.63(e)(2)
146.46(c)	146.63(e)(1)
146.46(d)	146.68(c)
146.46(e)	146.68(e)
146.47(a)	146.71(a)
146.47 (b), (c), (d), (e)(1), (2)	Removed
146.47(e)(3)	146.71 (b), (d)
146.47(e)(4)	146.64(b); 146.71(c)
146.47(f)	Removed
146.48(a)(1)	146.63(a)(3)
146.48(a)(2)	146.63(a)(4)
146.48(a)(3)	146.63(a)(5)
146.48(b)	146.61
146.48(c), (d)	146.63(b)(1); 146.64(a)
146.48(e)(1)	146.65(b)(2)
146.48(e)(2)	146.65(c)
146.48(f)	146.65(d)(1)

APPENDIX A—CALCULATION OF FOREIGN TRADE ZONE ACTIVATION AND ALTERATION FEES

A. Activation and Alteration Process

Before an application for a foreign trade zone, noncontiguous zone site with an operator different from already-activated site(s), or a subzone is approved by the District Director, the following tasks must be accomplished:

1. Determine that the application is in proper form;
2. Survey the premises to determine if all physical requirements are met;
3. Perform a background investigation of the applicant and the applicant's officers and employees;
4. Prepare a report of the survey and investigation; and
5. Review the application, survey and investigation reports, and other pertinent information, and prepare a response to the applicant.

Customs must also perform a background investigation of any new operator selected for an operating agreement with the grantee, after initial activation, and assumes that a new operator is selected on the average of every seven years.

Tasks similar to those for activation must be accomplished when an application for alteration is filed with the District Director, except that no background investigation is required.

B. Activation Fee for General-Purpose Zones

The following cost elements are included in the activation fee for general-purpose zones. The costs of the tasks performed by a Customs Special Agent have been increased by one-seventh to cover the cost of subsequent background investigations of new zone operators, rather than charge a separate fee upon application for approval of new operators.

Element	Title	Average grade	Average hours	Hourly rate
Initial application review	Clerk	(GS-5/5)	(1)	(\$8.81)
Premises survey	Inspector	(GS-11/5)	(15)	(18.28)
Background investigation	Agent	(GS-12/5)	(27)	(21.92)
Typing reports and response	Clerk	(GS-5/5)	(4)	(8.81)
Final review	Administrator	(GS-13/5)	(3)	(26.07)

Travel—3 round trips×40 miles×20 cent per mile (\$24).

The fee is rounded off to the nearest \$10. (\$1,020).

C. Activation Fee for Subzones and Certain Noncontiguous Zone Sites

The following cost elements are included in the activation fee for subzones and for noncontiguous zone sites having a different operator than the already-activated site(s). Normally, the operator of a noncontiguous zone site with an operator different from other sites is a manager of a single enterprise that occupies the entire site, and is treated, for activation purposes, as a subzone operator.

Element	Title	Average grade	Average hours	Hourly rate
Initial application review	Clerk	(GS-5/5)	(2)	(\$8.81)
Premises survey	Inspector	(GS-11/5)	(18)	(18.28)
Background investigation	Agent	(GS-12/5)	(66)	(21.92)
Typing reports and response	Clerk	(GS-5/5)	(6)	(8.81)
Final review	Administrator	(GS-13/5)	(4)	(26.07)

Travel—3 round trips×60 miles×20 cent per mile (\$36).

The fee is rounded off to the nearest \$10 (\$1,960).

D. Alteration Fee for Zones and Subzones

The following cost elements are included in the alteration fee for all zones, zone sites, and subzones. No background investigation is made upon alteration, so no cost for that element is included.

Element	Title	Average grade	Average hours	Hourly rate
Initial review	Clerk.....	(GS-5/5).....	(2)	(\$8.81)
Premises survey	Inspector	(GS-11/5).....	(14)	(18.28)
Typing report and response.....	Clerk.....	(GS-5/5).....	(3)	(8.81)
Final review.....	Administrator.....	(GS-13/5).....	(2)	(26.07)

Travel—2 round trips×40 miles×20 cent per mile (\$16).
The fee is rounded off to the nearest \$10 (\$360).

E. Administration of Fees

The above amounts in parentheses indicate cost estimates for Customs for Calendar Year 1983 and 1984. The fee will be adjusted annually to take into account changes in Customs employee pay scales, and adjusted periodically for changes in investigation and survey practices and other factors that affect the way applications for activation and alteration are processed. On December 1 of each year, the fee will be announced to the public for collection during the coming calendar year.

The hourly rate listed for Customs employees includes an amount (37 percent) added for fringe benefits. The fringe benefit amount is calculated according to Section 24.17(d), Customs Regulations.

The activation fee covers all sites of a zone or subzone at the time of the original activation. The alteration fee is separate for each site in respect to which an alteration takes place.

Example: If an already activated zone wishes to activate two new noncontiguous sites under the same operator, the fee is $2 \times \$360$ or \$720.

The fee is payable with the applications for activation or alteration. The District Director will provide a receipt for the fee to applicants on Customs Form 5104, Cash Receipt.

APPENDIX B—CALCULATION OF ANNUAL FEES

A. Distinction Between Small and Large General-Purpose Zones

Small zones are those with less than \$10,000,000 worth of combined receipts and deliveries of merchandise, foreign and domestic, for the latest reporting year. Large zones are those with more than \$10,000,000 of receipts and deliveries. The dollar volume is the amount reported to the Foreign Trade Zones Board for the latest year in which they are available to the District Director. New general-purpose zones for which no amount has yet been reported are assumed to be small zones. Subzones to which the special subzone fee (see B. below) does not apply will have the same fee as a general-purpose zone of a corresponding dollar value of receipts and deliveries.

B. Fee for Small General-Purpose Zones

The annual fee for small general-purpose zones will be computed from the following annual Customs cost elements:

Element	Average hours	Title	Average grade	Hourly rate
Merchandise examination.....	(6)	Inspector.....	(GS-9/5).....	(\$15.12)
Spot check inspections.....	(16)	Sr. Inspector.....	(GS-11/1).....	(16.17)
Audits	(67)	Auditor.....	(GS-12/1).....	(19.35)
Clerical support	(10)	Clerk/typist.....	(GS-5/1).....	(8.81)
Management and supervision	(5)	Supervisor	(GS-14/1).....	(27.18)

Plus travel and per diem costs, mostly for audits (\$691).

Fee will be rounded off to nearest \$100 (\$2,600).

The amounts above in parentheses represent estimates for Calendar Year 1983 and 1984.

C. Fee for Small General-Purpose Zones

The annual fee for small general-purpose zones will be computed from the following annual Customs cost elements:

Element	Average hours	Title	Average grade	Hourly rate
Merchandise examination.....	(130)	Inspector.....	(GS-9/5).....	(\$15.12)
Spot check inspections.....	(64)	Sr. Inspector.....	(GS-11/1).....	(16.17)
Audits	(167)	Auditor.....	(GS-12/1).....	(19.35)
Clerical support	(15)	Clerk/typist.....	(GS-5/1).....	(8.81)
Management and supervision	(7)	Supervisor	(GS-14/1).....	(27.18)

Plus travel and per diem costs, mostly for audits (\$1,084).

Fee rounded off to nearest \$100 (\$7,600).

D. Fee for Subzones and Noncontiguous Zone Sites

The annual fee for subzones and noncontiguous zone sites will be tailored according to the characteristics of the particular zone situation.

Customs costs will be estimated by the Regional Commissioner in November of each year for the following calendar year and reported to each affected subzone and zone site operator in the region not later than December 1 of each year. For new subzones and noncontiguous zone sites the estimated costs will be those incurred by Customs between approval of the application for activation and the end of the current calendar year, and reported to the subzone or zone site operator before approval of the application.

The costs will be calculated by the Regional Commissioner according to the following guidelines:

1. *Merchandise examinations.* Number of examinations per year X average time for examination X hourly rate plus 37 percent of average grade level of officers who perform examinations. Examination costs for covered subzones and zone sites should be low because the nature of these sites precludes examination of most merchandise.

2. *Spot check inspections.* Number of spot checks per year X number of officers per spot check X average time per spot check, including tactical planning X hourly rate plus 37 percent of average grade level of officers who conduct spot checks.

3. *Audits.* Number of staff-hours per audit divided by frequency of audit X hourly rate plus 37 percent of average grade level of officers who conduct audit.

4. *Clerical support.* Number of staff-hours for filing Customs Form 214 for spot check planning, typing and filing spot check reports, typing and filing audit reports, typing and filing liquidated damages notices, preparing work schedules, and performing miscellaneous clerical support tasks related to individual subzone or non-contiguous zone site X hourly rate plus 37 percent of average grade level of employees who provide clerical support.

5. *Management and supervision.* Number of staff-hours for planning spot check and audit programs, reviewing spot check and audit reports; supervising spot check and audit personnel, reviewing liquidated damages notices and petitions, meeting with operators concerning results of spot checks and audits, and providing Headquarters and regional operational program support X hourly rate plus 37 percent of average grade level of supervisors and managers who perform these tasks in relation to the subzone or zone site.

6. *Travel and per diem.* a. *Spot checks.* Number of spot checks per year X round trip mileage to site X current mileage reimbursement rate (or number of spot checks X common carrier passenger fare), plus other reimbursable costs to officer (tolls, parking, per diem or actual expenses), where applicable.

b. *Audits.* Round trip common carrier passenger fare (or round trip mileage to site X current mileage reimbursement rate), plus per diem or actual expenses as fixed by the U.S. Government, plus other reimbursable costs (rental vehicle, tolls, parking, etc.), all of the foregoing divided by the frequency of the audit, i.e., the number of years from one audit to the next.

E. General Information About Fees

1. The estimates for general-purpose zones will be adjusted annually to reflect U.S. employee pay changes and periodically to reflect changes in average grade levels for the tasks and time consumed in the activity element. All elements for subzones and covered non-contiguous zone sites will be adjusted annually. All fees will be rounded off to the nearest \$100.

2. The hourly rates will be at the current General Schedule pay levels as of December 1 of each year, plus 37 percent for fringe benefits, calculated as noted in Section 24.17(d), Customs Regulations.

3. All costs are estimates for the calendar year and will remain the same for the zone regardless how much time is consumed or how many employees are actually involved in zone supervision activities. The amount of Customs staff-hours actually spent in a zone in a given year is not necessarily indicative of Customs estimated costs for the following year.

4. Audit costs are prorated over the number of years anticipated from one audit to the next.

5. Costs for general purpose zones are prorated over the number of zones in the same large or small size category.

6. The annual fees will be recalculated each year and announced on December 1 for the coming calendar year. They will be announced by the District Director for the zones within his or her jurisdiction.

7. The fees are due and payable upon approval of the application for activation and on January 1 of each subsequent calendar year. The annual fee paid upon approval of the application shall be prorated by the District Director over the full and partial months remaining in the calendar year.

8. The fees shall be paid within 14 calendar days of the due date. If not timely paid, liquidated damages shall be assessed under the bond rider. Action may be taken to suspend activation when payment of the fee is in arrears more than 30 days. There shall be no refund of any annual fees paid to the District Director because of deactivation or suspension of activation of a zone, or termination of activation.

9. The fees cover all of the sites of a zone or subzone operated by the same operator within the jurisdiction of the same port.

10. Payment of the fees shall be made according to the procedures in Section 24.1, Customs Regulations. The District Director shall provide a receipt on Customs Form 5104, Cash Receipt.

APPENDIX C—INITIAL REGULATORY FLEXIBILITY ANALYSIS ON PROPOSED CUSTOMS REGULATIONS AMENDMENTS RELATING TO FOREIGN TRADE ZONES

Introduction

The economic impact review below constitutes the Customs Service initial regulatory flexibility analysis in compliance with the requirements of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 603). The Act requires that regulatory effects be analyzed so as to determine and quantify, if possible, the economic effects of proposals on small business operations. The Act's key concepts revolve around identifying "significant economic impacts on a substantial number of small entities." The initial analysis will be modified as

necessary into a final regulatory flexibility analysis upon receipt and review of public comments resulting from Federal Register publication of this notice of proposed rulemaking.

Rationale

The number of Foreign Trade Zones, complexity of operations and volume of trade passing through zones has increased significantly in recent years. From less than 20 zones in the early 1970's, activated zones and sub-zones at the end of 1982 numbered 65, with 22 pending applications for new zones and 19 approved but not activated zones.

Meanwhile, Customs inspection and supervision of zone activity has changed little in practice. Secular reductions in agency resources have combined with unchanged practices to produce (1) operational hardships on zone grantees and tenants and (2) uncertain inspection and control of zone activity.

The proposed revisions to 19 C.F.R. Parts 18, 24, 112, 141, 144 and 146 (relating to Customs administration of foreign trade zones) and 191 is an administrative attempt to update zone supervision in accordance with current business practices.

Objectives

The proposal is intended to bring about three fundamental changes:

(1) The method of accountability of merchandise admitted, stored, manipulated, exhibited, manufactured and removed from zones;

(2) The method of enforcement of Customs laws through audits and spot checks instead of more costly physical presence of inspectional resources; and

(3) The method of reimbursing Customs for its zone-related operational expenses.

Legal Basis for Proposal

This regulatory project is initiated under the authority of R.S. 251, as amended, Sections 1-21, 48 Stat. 998, 999 as amended, 1000, 1002, as amended, 1003, 77A Stat. 14, Section 624, 46 Stat. 759 (19 U.S.C. 66, 81a-81u, 1202 (General Headnote 11), 1624).

Estimated Number of Small Entities Affected

Tallies of zone activity in Customs regions indicate that approximately 1,500 tenants occupy space in zones and carry out the range of permitted manipulation, manufacturing and storage activities. Of these, 600 operate on a full-time, year-round basis. The remaining 900 operate on a part-time basis. These estimates do not include tenants in foreign trade sub-zones. Sub-zone tenants tend to be large (oftentimes multinational) corporations and thus do not fit within the purview of the requirements of the Regulatory Flexibility Act which concentrate on small business concerns.

Economic Effects of Compliance With the Proposal

After review of the proposal's work plan, we have identified within the proposal the following six procedural/administrative and fee-related changes likely to affect economic concerns of small business:

A. Procedural administrative changes.

1. Inventory, record keeping and control system.
2. Operators' control over admission and removal of goods.
3. Elimination of Customs forms 7502/7505/215.
4. Mandatory bonding.

B. Fee changes.

1. Elimination of present form of reimbursement to Customs.
2. Annual fee covering audits and spot checks.
3. Zone activation and boundary alteration fee.

A. *Procedural/Administrative Changes*

—Inventory Record Keeping and Control System. An inventory record keeping and control system with Customs prescribed data will result from this proposal. A similar system (Alternative Inventory Control System) has been in effect since 1976 and currently operates at 7 general purpose zones. Data required for the new system will consist of standard business data currently collected and tabulated for small tenants by each zone's operator/grantee. We do not anticipate a significant net reporting burden on tenants or operators as a result of this segment of the proposal.

—Operators' Control Over Admission and Removal of Goods. Under present Customs supervision, a Customs officer must be present to clear admissions of merchandise to and removals of merchandise from a zone, thus limiting these transactions to the availability of a Customs officer. Under the present proposal, an operator will be able to admit and remove merchandise without a Customs officer being present, after receiving Customs approval. However, Customs approval for admission will require an invoice in support of the application for admission on CF 214 and that the merchandise be retained for Customs examination at the place of unloading, the zone, or other locations designated by the district director. Presentation of an invoice and merchandise examination prior to admission are not currently required and will represent an additional paperwork requirement and possible delay in the arrival of merchandise at the zone. Customs approval for removals will be simplified by a reduction in paperwork as outlined in the next section. In total, the additional admission requirements will be offset by the simplified removal procedure and the enhanced business flexibility derived from being able to admit or remove merchandise freely into and out of the zone after Customs approval has been received.

—Forms Elimination—Customs Forms 7502/7505/215. Under present practice, Customs forms 7502 and 214 are required to

obtain privileged foreign status. Removal of privileged foreign status merchandise from a zone requires filing CF 7505 for consumption. CF 215 is required to remove all zone status merchandise, except merchandise in privileged status or wholly composed of merchandise in privileged status. The estimated number of forms filed in FY 1982 appear in Table 1 below.

TABLE 1

Form:	
7502.....	10,000
7505.....	20,000
215.....	40,000

Under a provision of this proposal, a request for privileged foreign status would require a CF 214 and invoice (as before) but would eliminate the CF 7502. Upon removal of privileged foreign status goods from a zone, the applicable entry form would replace the 7505 (no net gain or loss). Further, the CF 215 will be eliminated under this proposal. Current clerical, data base management and brokerage costs for an estimated 50,000 forms 7502/215 would be eliminated, giving small businesses a net gain on the order of \$550,000 yearly from this procedural change.

—Mandatory Bonding. One of the major proposed changes in zone administration is to involve the operator/grantee in data keeping and reporting. A new mandatory bond at a minimum level of \$50,000 would be required in another provision of the proposal, with the goal of encouraging operator/grantee accuracy in compliance with his new responsibilities. The new bond would cover non-compliance with these proposed regulations as well as losses of merchandise. In terms of practical effects of this provision on small businesses, we anticipate no net appreciable added burden or cost. Most activated zones currently have bonds which meet or exceed the proposed minimum level.

B. Fee Changes

—Elimination of Present Form of Customs Reimbursement. Under present practices, operators/grantees reimburse Customs for inspectional services rendered at zones. In fiscal year 1982, payments to Customs totaled an estimated \$1.6 million, of which \$1.2 million pertain to operations at general purpose zones. Assuming operators charge tenants flat fees to recover these payments, then each small tenant pays an average of \$800 per year for these present Customs services. The proposed revisions would *eliminate* this \$1.2 million present fee, substituting in its place (see below) tiered fees which would cover Customs costs in carrying out audits and spot checks.

A particular concern is underscored at this point, concerning the distribution of this \$1.2 million benefit (eliminated Customs reimbursement). The 52 general purpose zones at the end of FY 1982

are widely distributed around the country. A small business interested in participating in a foreign trade zone generally finds itself limited to one and only one zone provider in its operating area. The offering of foreign trade zone services could thus be regarded as a monopolistic market condition. Significant administrative and application costs in seeking approval and setting up a zone essentially prevents access by (especially small) businesses. In essence, then, they must generally contract with the sole established zone operator in that geographic area.

In economic theory, the pricing practices of a good/service provided under monopolistic conditions are oriented toward extracting a maximum profit for the unique provider, and, in practice, the level of fees charged by some zone operators/grantees is a known concern of the Commerce Department's Foreign Trade Zone Board.

As stated above, average savings per tenant from elimination of Customs reimbursement is expected to approximate \$800 per year. Based on actual trade zone market conditions, however, real actual savings to tenants may total well below the average \$800/year. We expect that zone operator/grantees will pass through to small tenants only a portion (quite possibly small) of the total \$1.2 million estimated benefit of this provision of the proposed regulation. Data submitted on this subject during the period of public comments would be especially valued in either firming up or altering our estimate of this provision's benefit to small business concerns.

—Annual Fee. Calendar years 1983 and 1984 based fee schedule is tiered. "Small" general purpose zones are defined as those whose receipts and deliveries total \$10 million or less per year; "large" zones, greater than \$10 million. At the end of FY 1982, about 35 of the 52 active general purpose zones were "small" for the purposes of this proposal. Small zones are to be charged an annual fee of \$2,600; large zones, \$7,600. Fees for sub-zones and single-purpose zones are to be determined locally by the appropriate Customs regional commissioner. Since sub-zone tenants are generally large companies, the effects of fees on them do not fall within the purview of the RFA and this analysis and thus will not be considered in this economic review. While these fees are subject to annual revision and adjustments in order to insure recovery of Customs costs, prospects of federal pay and benefit restraint act to limit prospective fee increase to modest levels. The net burden on small business from this fee schedule (yielding \$224,000/yr.) would be minimal, approximating \$150 per tenant per year. Elimination of the current reimbursement method, even under the caveats noted above, would more than cover these new audit-approach fees.

—New Zone Activation and Boundary Alteration Fees. Under present procedures, zone applicants are not billed for necessary Customs preparatory work prior to a zone's activation or alteration. The proposed revisions contain a provision allowing Customs to recover its costs for such tasks, among others, as site surveys,

background investigations, zone approval processing, inventory systems review and associated clerical costs. These fees would be applicable to zones which are activated, reactivated (in certain situations) or altered on or after the effective date of final rulemaking.

Prospective fees are currently estimated at the following:

- (a) \$1,020 for general purpose zone activation/reactivation;
- (b) \$1,960 for sub-zone activation/reactivation; and
- (c) \$360 for zone and sub-zone alterations.

Concerning effects on small businesses, we expect average added cost pass-throughs from this source to be insignificant.

Overlapping Rules

None identifiable.

Alternative Proposals

None feasible. The *Status Quo* become more untenable as complex zone manufacturing operations increase in number while Customs resources diminish.

Summary of Economic Effects

Based on present available data, the proposed revisions would appear to provide net yearly benefits to zone operators and tenants of \$1.5-\$1.6 million, as summarized below:

QUANTIFIED COST (-)/BENEFITS (+)

[In dollars]

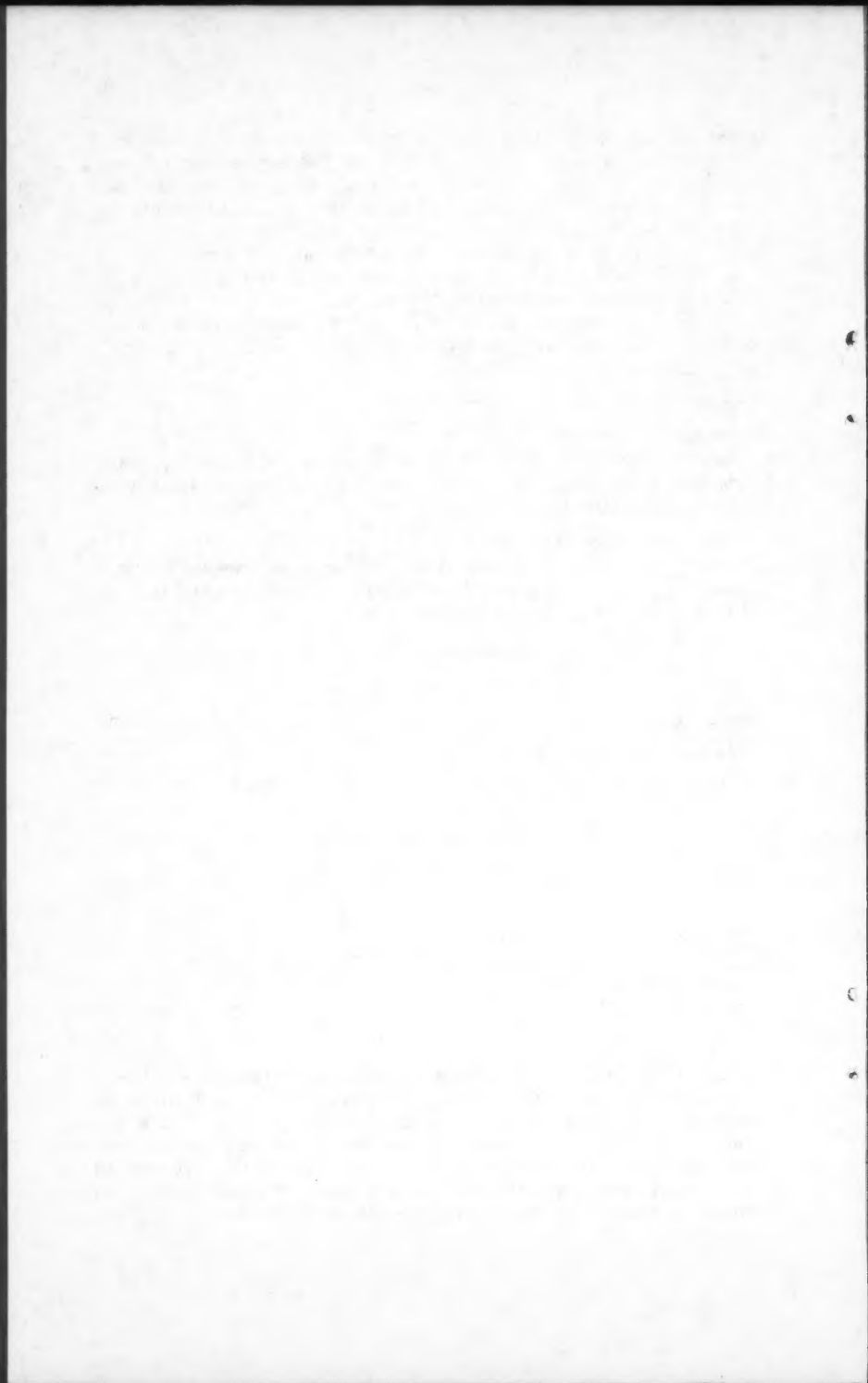
Document Reduction.....	+ 550,000
Current Reimbursement Eliminated.....	+ 1,200,000
New Annual Fees for Audit Approach	- 224,000
Total	+ 1,526,000

NON-QUANTIFIED FACTORS

	Added costs	New benefits	Neutral effect
Admission of goods.....	X		
Removal of goods.....		X.....	
Inventory control and record keeping system			X
Mandatory bonding.....			X

E. O. 12291

Executive Order 12291 relates to regulatory changes which are classified as "major rules", that is, proposals which will have (1) an aggregate economic cost factor of \$100 million or more, (2) a major increase in prices or costs or (3) a significant adverse effect on competition. Under those criteria, we do not consider this proposal to be a "major rule", and thus the agency does not intend to perform an initial regulatory impact analysis that would be required by the Order.



July 17, 1984.

ANNOUNCEMENT

Judge James L. Watson, Chairman, Committee on Rules and Practice, United States Court of International Trade, announced that a hearing to consider amendments to the Rules of the United States Court of International Trade will be held on Thursday, August 16, 1984, at 10 a.m., in Courtroom No. 1 at the Courthouse, One Federal Plaza, New York, NY.

The hearing will focus on proposed changes to Rules 4, 5, 7, 11, 16, 24, 26, 37, 41, 52, 56.1, 67, 68, 71, 81, 82, 83, 85, and 86.

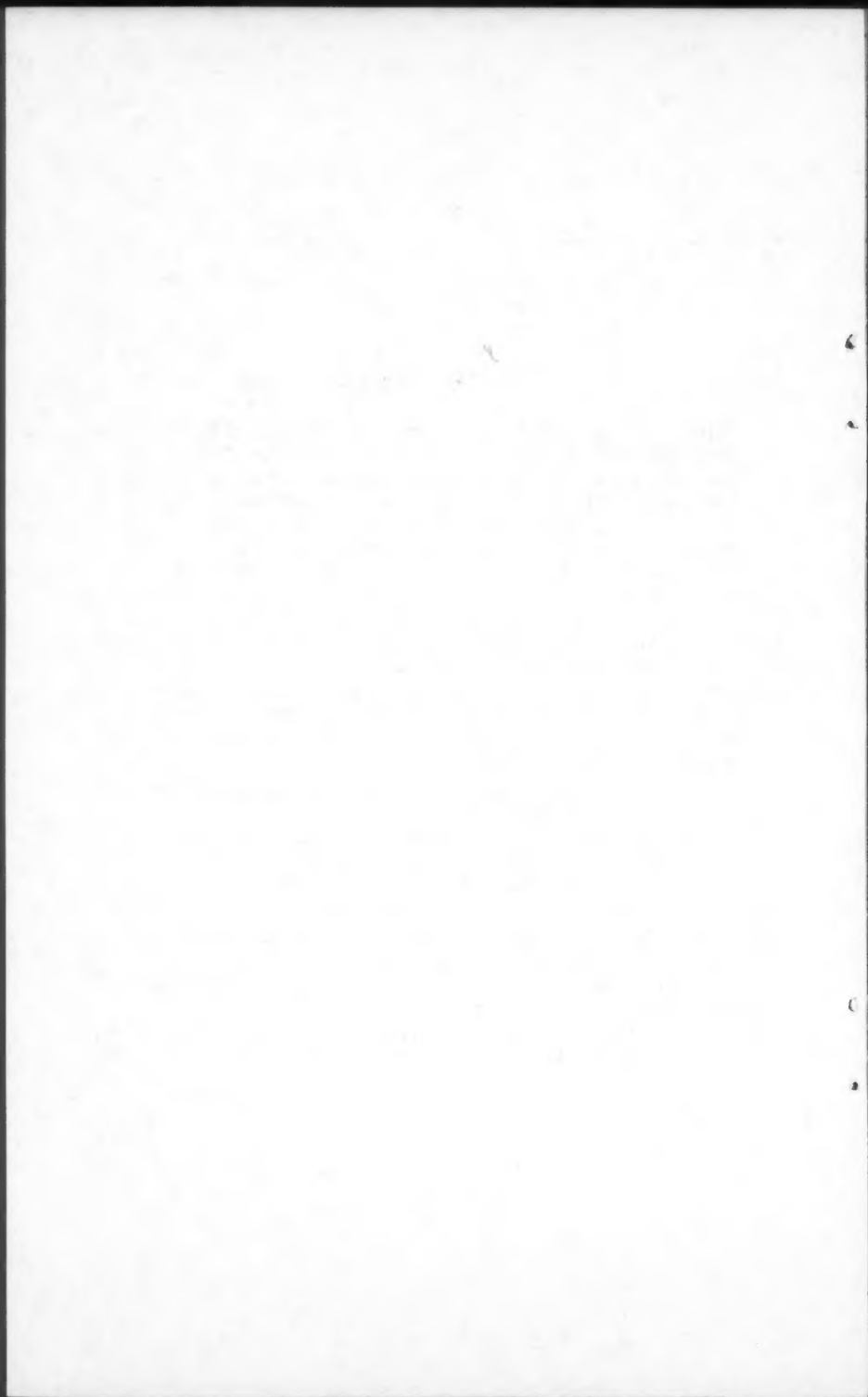
Those who wish to present views pertaining to these proposals should submit a notice of appearance together with five (5) copies of a written statement of their comments and recommendations to Joseph E. Lombardi, Clerk of Court, by the close of business on Thursday, August 9, 1984. The written statement should be typewritten, not more than 20 double-spaced pages in length, and include:

1. The name, full address, and capacity of the person submitting the statement;
2. A list of any clients or persons, or any organization on whose behalf the statement is submitted; and
3. A topical outline or summary of the comments and recommendations in the statement.

Only those who submit a notice of appearance and a written statement will be permitted to appear at the hearing.

Those who wish to submit a statement without appearing at the hearing may do so as prescribed above.

Copies of the proposed amendments to the Rules and further information may be requested by calling 212-264-2800.



United States Court of International Trade

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
James L. Watson

Gregory W. Carman
Jane A. Restani

Senior Judges

Nils A. Boe

Frederick Landis

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

(Slip Op. 84-77)

Decisions of United States Court of International Trade

CERAMICA REGIONMONTANA, S.A. and INDUSTRIAS INTERCONTINENTAL, S.A., PLAINTIFFS, v. UNITED STATES, ET AL., DEFENDANTS, INTERNACIONAL DE CERAMICA, S.A., APPLICANT FOR INTERVENTION, TITLE COUNCIL OF AMERICA, APPLICANT FOR INTERVENTION

Court No. 84-3-00387

Before: RE, *Chief Judge*.

MEMORANDUM OPINION AND ORDER

Internacional De Ceramica (Interceramica) and Tile Council of America (TCA) apply for intervention as of right to challenge the final affirmative determination of a section 751 administrative review by the Department of Commerce's International Trade Administration. Interceramica moves to amend its statement of claim to comply with Rule 24(c) of the Rules of this Court. Interceramica also moves for a preliminary injunction suspending liquidation of entries of Mexican ceramic tile affected by this litigation pending a final determination of the merits.

Held: As interested parties to the countervailing duty proceeding below, Interceramica and TCA are entitled to intervene as of right in this action; the pleading requirement of Rule 24(c) is to be liberally construed to allow amendment when no prejudice to opposing parties will result; and balance of hardships favors granting of injunction maintaining the *status quo*.

[Interceramica's application for intervention, motion to amend its complaint and motion for preliminary injunction are granted; TCA's application to intervene is granted.]

(Decided June 29, 1984)

Stein Shostak Shostak & O'Hara (Irwin P. Altschuler and David R. Amerine), for the plaintiffs.

Richard K. Willard, Acting Assistant Attorney General; *David M. Cohen*, Director Commercial Litigation Branch (*A. David Lafer*), for the defendants.

Wald, Harkrader & Ross (*Noel Hemmendinger, Walter J. Spak and Jeffrey W. Carr*), for the proposed intervenor.

Howrey & Simon (*David C. Murchinson, John F. Bruce, Kevin P. O'Rourke and Doris E. Long*), for the proposed intervenor.

RE, *Chief Judge*: Plaintiffs, Ceramica Regiomontana and Industrias Intercontinental, challenge the final affirmative determination of a section 751 administrative review by the Department of Commerce's International Trade Administration (ITA) of its original countervailing duty order. The administrative review was conducted pursuant to section 751 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675 (1982), and pertained to ceramic tile imported from Mexico. 49 Fed. Reg. 9,919 (1984).

Pursuant to 28 U.S.C. § 2638(j)(1)(B) (1982) and Rule 24(a)(1) of the Rules of this Court, Internacional De Ceramica (Interceramica) and the Tile Council of America (TCA) move to intervene in this action as a matter of right. In addition, under Rule 15, Interceramica moves for leave to amend its "complaint." Actually, Interceramica moves to amend its statement of claim, which accompanied its motion for intervention. Interceramica has also filed a consent motion for a preliminary injunction, to enjoin, during the pendency of this action, the liquidation of all entries of ceramic tile which it manufactures and exports from Mexico, which are covered by the countervailing duty order, and are the subject of this action. TCA opposes Interceramica's request for a preliminary injunction.

The following questions are presented:

1. Whether Interceramica and TCA may intervene as a matter of right;
2. Whether Interceramica may amend its "complaint"; and
3. Whether Interceramica is entitled to preliminary injunctive relief.

For the reasons that follow, the motions by Interceramica and TCA to intervene as a matter of right are granted. The court also grants Interceramica's motions to amend its complaint, and for preliminary injunctive relief.

Intervention

Intervention as a matter of right is governed by 28 U.S.C. § 2631(j)(1)(B) and Rule 24(a)(1) of the Rules of this Court. Rule 24(a)(1) permits intervention upon timely application if a federal statute provides the applicant with an unconditional right to intervene. Title 28 U.S.C. § 2631(j)(1)(B), referred to in Rule 24(a)(1), provides that:

In a civil action under section 516A of the Tariff Act of 1930, only an interested party who was a party to the proceeding with which the matter arose may intervene, and such person may intervene as a matter of right.

Id.

In order to intervene, Interceramica and TCA must establish that they are interested parties who were parties to the countervailing duty proceeding pertaining to ceramic tile from Mexico. Interested parties, by the express provisions of section 771(9) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1677(9) (1982), include:

(A) A foreign manufacturer, producer, or exporter * * * of merchandise which is the subject of an investigation under this title * * *, and * * *

(E) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

Id.

A review of the applications for intervention, and the administrative record, shows clearly that Interceramica is a foreign manufacturer and exporter of ceramic tile from Mexico, and that it participated in the periodic review which serves as the basis of this action. It is also clear that TCA is a trade association which represents American ceramic tile manufacturers, and that it filed the original countervailing duty petition pertaining to ceramic tile imported from Mexico. TCA also participated in the section 751 review proceeding which is the subject of plaintiffs' action. Consequently, it is the determination of the court that both Interceramica and TCA are interested parties within the definition of sec-

tion 771(9). Hence, they are entitled to intervene in this action under section 2631(j)(1)(B) and Rule 24(a)(1).

PLEADING REQUIREMENT

Rule 24(c) of the Rules of this Court requires that a "pleading" accompany a motion to intervene. TCA argues that the statement of claim, which accompanied Interceramica's request for intervention, is not the equivalent of a complaint. Hence, TCA asserts that Interceramica has failed to comply strictly with the pleading requirement of Rule 24(c). The court, therefore, is urged to deny Interceramica's motion to intervene as a matter of right.

The operative language of Rule 24(c), is identical to that of Rule 24(c) of the Federal Rules of Civil Procedure. Rule 24(c), in pertinent part, provides that a motion to intervene "shall state the grounds therefor and shall be accompanied by a *pleading* setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene." *Id.* (emphasis added).

A review of the cases which have interpreted the pleading requirement of Fed. R. Civ. P. 24(c) reveals a split of authority. Some courts have adopted a strict view, and hold that a motion to intervene is properly denied when not accompanied by a pleading. See *Hirshorn v. Mine Safety Appliances Co.*, 186 F.2d 1023 (3d Cir. 1951) (*per curiam*); *Miami County Nat'l Bank v. Bancroft*, 121 F.2d 921, 926 (10th Cir. 1941); *Bachrach v. General Inv. Corp.*, 29 F. Supp. 966, 968 (S.D.N.Y. 1939). According to this strict approach, the accompanying pleading must conform with Fed. R. Civ. P. 7(a) so that the parties to the action may understand the intervenor's claims or defenses. See *Sanders v. John Nuveen & Co.*, 463 F.2d 1075, 1082 (7th Cir.), *cert. denied*, 409 U.S. 1009 (1972). Hence, under a strict approach, the lack of an accompanying pleading is not cured by the submission of a motion to dismiss, by an assertion in the intervenor's motion that his claim is the same as that of plaintiff, or by an affidavit which states that the intervenor is adopting plaintiff's complaint. See *Gabauer v. Woodcock*, 425 F. Supp. 1, 3 (E.D. Mo. 1976), *aff'd in part and rev'd in part on other grounds*, 594 F.2d 662 (8th Cir.), *cert. denied*, 444 U.S. 841 (1979); *Abramson v. Penwood Inv. Corp.*, 392 F.2d 759, 761 (2d Cir. 1968); *Pikor v. Cinerama Prods. Corp.*, 25 F.R.D. 92, 95 (S.D.N.Y. 1960).

A more liberal approach, however, provides that if the alleged defect in the pleading is adequately cured without prejudice to the party opposing intervention, non-compliance with the strict requirements of Fed. R. Civ. P. 24(c) will not bar intervention. *Spring Constr. Co. v. Harris*, 614 F.2d 374, 377 (4th Cir. 1980); *Belgian Am. Mercantile Corp. v. DeGroeve-Marcotte & Fils*, 433 F. Supp. 1098, 1101 (S.D.N.Y. 1977); *McCausland v. Shareholders Management Co.*, 52 F.R.D. 521, 524 (S.D.N.Y. 1971). This approach manifests a sound

philosophy of procedure and pleadings. As stated in *Berkey Technical Corp. v. United States*, 71 Cust. Ct. 275 (1973),

It is well to remember that procedure "exists only for the sake of 'substantive' law." In broad terms, pleadings are designed to inform the court of the question before it for decision. They are the written statements made by the parties of their respective grounds of action or defense. The object is to ascertain what are the matters in controversy, and to keep the inquiry within reasonable bounds.

Id. at 276 (citing Holland, *Jurisprudence* 355 (12th ed. 1917) and Pollock, *Jurisprudence* 79-80 (1929)).

In *Spring Construction*, the question presented was whether Lawyer's Title Insurance Company could intervene in a contract action between Spring Construction Company and the Department of Housing and Urban Development. The title company, although it filed a petition and affidavit which were sufficient to apprise Spring of its claims, failed to comply strictly with the requirements of Rule 24(c) of the Federal Rules of Civil Procedure. Stating that "the proper approach is to disregard non-prejudicial technical defects," the court granted intervention since Spring was not prejudiced by the title company's failure to file a complaint together with its motion to intervene. *Spring Constr.*, 614 F.2d at 377. In *Spring Construction*, the court found that the parties would not have been prejudiced by permitting the proposed intervenor to amend its complaint shortly after filing its motion for intervention. *Id.* at 377.

As in *Spring Construction*, under the circumstances presented, the Court sees no reason to adopt a strict construction of the pleading requirement of this Court's Rule 24(c). Interceramica has endeavored to cure any perceived defect in its pleading, technical or otherwise, by filing a motion for leave to amend its "complaint." The court finds that neither defendant nor TCA would be prejudiced by the granting of Interceramica's motion. Accordingly, the court grants Interceramica's motion to amend its complaint.

PRELIMINARY INJUNCTION

In order to preserve the *status quo*, the court is authorized to grant injunctive relief suspending liquidation of entries of Mexican ceramic tile pending the outcome of this litigation. Tariff Act of 1930, § 516A(a), as amended, 19 U.S.C. § 1516a(c) (1982), and 28 U.S.C. § 2643(c) (1982). Upon a request for preliminary injunctive relief, it is well established that the court must consider the following four elements or factors:

- (1) A threat of immediate irreparable harm;
- (2) That the public interest would be better served by issuing than by denying the injunction;
- (3) A likelihood of success on the merits; and

(4) That the balance of hardship on the parties favors the moving party.

S. J. Stile Assocs. Ltd. v. Snyder, 68 CCPA 27, 30, 646 F.2d 522, 525 (1981). See also Restatement (Second) of Torts § 936(2).

Recently, however, this Court, as well as other federal courts, has adopted a flexible approach which emphasizes a "balance of the hardships," which does not require the moving party to sustain a high burden of proof as to each of the four factors enumerated. See *American Air Parcel Forwarding Co. v. United States*, 1 Ct. Int'l Trade 293, 298, 515 F.Supp. 47, 52 (1981); *Associated Dry Goods Corp. v. United States*, 1 Ct. Int'l Trade 306, 309, 515 F.Supp. 775, 778 (1981); *PPG Indus., Inc. v. United States*, 2 Ct. Int'l Trade 11, 13 (1981); *Tropicana Prods., Inc. v. United States*, 3 Ct. Int'l Trade 171, 174, modified, 3 Ct. Int'l Trade 240 (1982). After reviewing the development of the "balance of the hardships" test, the court in *American Air Parcel* concluded that:

While considering the public interest in all cases, the critical factors are the probability of the irreparable injury to the movant should the equitable relief be withheld, and the likelihood of harm to the opposing party if the court were to grant the interlocutory injunction. Although the extraordinary remedy of a preliminary injunction is not available unless the moving party's burden of persuasion is met as to all four factors, the showing of likelihood of success on the merits is in inverse proportion to the severity of the injury the moving party will sustain without injunctive relief, *i.e.*, the greater the hardship the lesser the showing.

1 Ct. Int'l Trade at 299-300.

TCA opposes Interceramica's motion for preliminary injunctive relief on two grounds: (1) that the court lacks jurisdiction to grant Interceramica's requested relief; and (2) assuming the existence of jurisdiction, Interceramica has failed to demonstrate that the equities in this action favor the granting of an injunction.

In support of its first ground, TCA argues that Interceramica has not satisfied the jurisdictional predicate for challenging the final determination of a section 751 periodic review. Specifically, TCA contends that Interceramica is required by statute to file a summons in order to obtain the judicial review that it seeks. See 28 U.S.C. § 2632(c) (1982); Tariff Act of 1930, § 516A(a)(2)(A), as amended, 19 U.S.C. § 1516a(a)(2)(A) (1982). JCA maintains that, to date, Interceramica has not filed with the court a timely summons. Moreover, TCA claims that the only summons in this action was filed by the plaintiffs, and that Interceramica cannot invoke jurisdiction by relying upon plaintiffs' summons. Therefore, TCA argues that until the jurisdictional defect is cured, which it states cannot occur because the time for filing a summons has run, the court cannot grant Interceramica's request for relief.

Congress, in enacting the Trade Agreements Act of 1979 and the Customs Courts Act of 1980, provided interested parties, who participated in the administrative proceeding below, with two separate and distinct rights to challenge the results of that proceeding. First, an aggrieved interested party may file a summons with this Court thereby commencing its own independent action pursuant to 19 U.S.C. § 516A(a) and 28 U.S.C. § 1581(c). Second, an aggrieved interested party may await the institution of a lawsuit by another interested party, and then seek to intervene as a matter of right under 28 U.S.C. § 2631(j)(1)(B) and Rule 24(a)(1). This is precisely what Interceramica has done in this case.

It is clear that both methods of proceeding are permissible, and that they are not mutually exclusive. Thus, the institution of an action does not preclude intervention in a second suit arising out of the same administrative proceeding. Similarly, intervention in a pending action does not bar a subsequent suit by that party. The legislative history which accompanies both the Trade Agreements Act of 1979 and the Customs Courts Act of 1980 indicates nothing to the contrary. It would seem clear, therefore, that an aggrieved interested party may proceed by either of the two methods permitted by law. See, e.g., *Silver Reed America, Inc. v. United States*, 7 Ct. Int'l Trade —, 581 F. Supp. 1290 (1984) *appeal docketed*, No. 84-1118 (Fed. Cir. April 26, 1984); and *Brother Indus., Ltd., v. United States*, 3 Ct. Int'l Trade 125, 540 F. Supp. 1341 (1982), *aff'd sub nom. Smith Corona Group, Consumer Products Division, SCM Corp. v. United States*, 713 F.2d 1568 (Fed. Cir. 1983).

TCA's opposition on jurisdictional grounds, therefore, is no more than a veiled attack on Interceramica's motion to intervene as a matter of right. In this action, Interceramica has chosen to proceed by intervention. In view of the clear Congressional intent, this Court cannot mandate that an aggrieved interested party must institute its own action rather than seek to intervene. Furthermore, TCA's rationale is contrary to judicial economy and fosters unnecessary litigation.

The court has carefully reviewed Interceramica's moving papers, and TCA's opposition, to consider whether the relevant factors and the balance of hardships favor Interceramica's request for preliminary injunctive relief. As to the probability of irreparable injury, since imported merchandise is susceptible to liquidation prior to court review of a section 751 determination, and since there is no statutory authority for reliquidation if a party were to succeed in its challenge of the determination, it has been held that liquidation of entries may constitute irreparable injury. *Zenith Radio Corp. v. United States*, 710 F.2d 806, 810 (Fed. Cir. 1983); *Timken Co. v. United States*, 6 Ct. Int'l Trade —, No. 82-6-00890, slip op. at 7 (Aug. 1, 1983); *Silver Reed America, Inc. v. United States*, —Ct. Int'l Trade —, No. 80-6-00934, slip op. at 12 (June 21, 1984). Since the entries will be liquidated prior to the court's review of the section

751 determination by ITA, the absence of a preliminary injunction will moot the controversy. It will also deprive Interceramica of its right to have rectified the errors allegedly made in the section 751 review. *American Spring Wire*, 7 Ct. Int'l Trade —, No. 82-10-01355, slip op. at 5-6 (Jan. 19, 1984). Hence, to deny the preliminary injunction would render Interceramica's right to intervene a nullity. In light of the wording of both the Trade Agreements Act of 1979 and the Customs Courts Act of 1980, Congress could not have intended such a result.

On the likelihood of success on the merits, Interceramica has raised the same serious questions posed by plaintiffs as to the methodology and findings of the ITA in its section 751 review of ceramic tile imported from Mexico. Moreover, there are significant questions of law which will seriously affect the ultimate outcome of this case. Therefore, the court has concluded that these questions "are sufficient to be considered 'fair ground for litigation and thus for more deliberative investigation.'" *American Air Parcel*, 1 Ct. Int'l trade at 301 (quoting *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d Cir. 1953)).

On balance, the court has concluded that the equities favor the issuance of a preliminary injunction suspending liquidation of Interceramica's entries of ceramic tile from Mexico. Nevertheless, before granting the injunction, the court must also consider the public interest, as well as the potential harm to the defendant, and, in this case, defendant-intervenor, TCA. Since the *status quo* will be maintained by Interceramica continuing to deposit estimated countervailing duties and keeping suspension of all liquidations in effect, no cognizable harm will be suffered by defendant or TCA by the issuance of the requested injunction. See 47 Fed. Reg. 20,012 (1982).

As for the public interest, there can be no doubt that it is best served by ensuring that the ITA complies with the law, and interprets and applies our international trade statutes uniformly and fairly. Under the law, Interceramica, as an interested party, has a right to participate in the judicial review process to challenge any perceived errors in the ITA's administration of those laws. To deny the preliminary injunction would foreclose Interceramica from exercising that legal right.

Accordingly, it is hereby ORDERED that:

1. Interceramica's motion to intervene as a matter of right is granted;
2. TCA's motion to intervene as a matter of right is granted;
3. Interceramica's motion to amend its complaint is granted; and
4. Interceramica's motion for preliminary injunction is granted; and it is further

ORDERED that during the pendency of this litigation, the defendants, together with their delegates and all other officers, agents, servants, and employees of the United States Customs Service,

shall be and are enjoined from the liquidation of any entries or withdrawals from warehouse for consumption of ceramic tile manufactured by Internacional De Ceramica, S.A., and exported from Mexico, which are subject to the Final Determination of Administrative Review of Countervailing Duty Order, Ceramic Tile from Mexico, issued by the Commerce Department and published in the Federal Register on March 16, 1984 (49 Fed. Reg. 9,919), and it is further

ORDERED that defendants shall instruct the appropriate officers of the United States Customs Service to withhold liquidation, during the pendency of this litigation, of all entries or withdrawals from warehouse for consumption of ceramic tile manufactured by Internacional De Ceramica, S.A., and exported from Mexico, which are subject to the Final Determination of Administrative Review of Countervailing Duty Order, Ceramic Tile from Mexico, March 16, 1984 (49 Fed. Reg. 9,919), and it is further

ORDERED that this order shall become effective ten days after entry of this order by the Clerk, and it is further

ORDERED that copies of this order shall be served upon Mr. Frank Brennan, Duty Assessment Division, United States Customs Service, and Mr. Leonard Shambon, Office of Compliance, International Trade Administration, United States Department of Commerce, immediately upon entry of this order by the Clerk of the Court.

Dated: June 29, 1984, New York, New York.

(Slip Op. 84-78)

ZENITH RADIO CORPORATION, PLAINTIFF, v. UNITED STATES,
DEFENDANT

Court No. 80-5-00861

(Dated June 29, 1984)

Before MALETZ, *Senior Judge*.

Opinion and Order

Frederick L. Ikenson, P.C. (Frederick L. Ikenson on the briefs) for plaintiff.

Richard K. Willard, Acting Assistant Attorney General (Velta A. Melnbrensis on the brief), for defendant.

MALETZ, *Senior Judge*: Zenith Radio Corporation (Zenith) has filed a motion to compel the government to produce various documents and answer specified interrogatories. The government has responded by filing a cross-motion for a protective order to preclude such discovery on the ground of privilege. For the reasons set out below, each motion is granted in part and denied in part.

I. Background

In this action, the government, by motion for assessment of damages, seeks recovery on a \$250,000 bond posted by Zenith as security for the arguably wrongful issuance of a preliminary injunction it procured in late 1980. See *Zenith Radio Corp. v. United States*, 1 CIT 53, 505 F. Supp. 216 (1980). That injunction—which barred implementation of agreements entered into between the government and various importers of television receivers from Japan that settled an antidumping duty proceeding—was later dissolved by reason of the holding in *Montgomery Ward & Co. v. Zenith Radio Corp.*, 69 CCPA 96, 105, 673 F.2d 1254, 1260, *cert. denied sub nom. Zenith Radio Corp. v. United States*, 103 S. Ct. 256 (1982), that the court lacked jurisdiction. See also *COMPACT v. United States*, 4 CIT 202, 551 F. Supp. 1142 (1982), *aff'd*, 706 F.2d 1574 (Fed. Cir.), *cert. denied*, 104 S. Ct. 96 (1983). The purported damage to the government is lost interest stemming from the delay in its receipt of some \$77 million under the settlement agreements.

Zenith has opposed the motion for assessment of damages, alleging that: (1) the government was not damaged by the injunction; (2) even if it had been damaged, its failure to mitigate damages precludes recovery; and (3) principles of law, equity, and fairness bar recovery.

In this setting, Zenith has moved to compel discovery following the government's partial objections to Zenith's (1) request for production of documents and (2) interrogatories. In support of its motion, Zenith maintains that discovery is necessary especially in connection with the defense of failure to mitigate,¹ which relies in large measure on the theory that the government failed to enforce its right to receive interest payments from the importers involved in the settlement for the period when the injunction was in effect.

The government has opposed Zenith's motion and cross-moved for a protective order, asserting that fifteen specified documents—copies of which it has provided to the court for examination *in camera*—as well as certain information requested by the interrogatories, are shielded from discovery by executive privilege, attorney-client privilege, and work product privilege. Zenith counters that these privileges must be deemed waived by virtue of the government's having moved for damages.

II. PRIVILEGES AND WAIVER

Against this background, the issue is this: To what extent does the government's motion for damages constitute a waiver of privileges? According to Zenith, the court should apply the so-called "automatic waiver" rule, under which "evidentiary privilege may not be * * * used by one invoking the Court's assistance in pros-

¹ If proven, the government's failure to mitigate could be a complete defense. See *Coyne-Delany Co. v. Capital Dev. Bd.*, 717 F.2d 385, 392 (7th Cir. 1983).

ecuting a claim." The government, for its part, points out that the automatic waiver rule has been rejected by many courts and argues that the proper approach is a test "which balances the policies underlying the privileges which are being asserted against the opposing party's need."

A. The Automatic Waiver Rule

A number of courts have adopted the automatic waiver rule advocated by Zenith, on the theory that when a party seeks judicial relief, he waives whatever privileges he has. The leading case is *Independent Prods. Corp. v. Loew's, Inc.*, 22 F.R.D. 266 (S.D.N.Y. 1958), where the court said:

It would be uneven justice to permit plaintiffs to invoke the powers of this court for the purpose of seeking redress and, at the same time, to permit plaintiffs to fend off questions, the answers to which may constitute a valid defense or materially aid the defense.

Plain justice dictates the view that, regardless of plaintiffs' intention, plaintiffs must be deemed to have waived their assumed privilege by bringing this action.

Id. at 276.

The automatic waiver rule has received wide application. See, e.g., *Ghana Supply Comm'n v. New England Power Co.*, 83 F.R.D. 586, 594 (D. Mass. 1979) (plaintiff, "by instituting this civil action * * *, has waived any privilege it might have otherwise had to prevent disclosure of information sought by NEPCO that is material to NEPCO's defense."); *Anderson v. Nixon*, 444 F. Supp. 1195, 1199 (D.D.C. 1978) ("Plaintiff is attempting to use the First Amendment simultaneously as a sword and a shield. * * * He cannot have it both ways. Plaintiff is not a bystander in the process but a principal. He cannot ask for justice and deny it to those he accuses."); *Federal Deposit Ins. Corp. v. St. Paul Fire & Marine Ins. Co.*, 53 F.R.D. 260, 262 (W.D. Okla. 1971) ("Plaintiff FDIC should be denied governmental privilege as to the reports of FDIC examiners because it instituted this action."); *United States v. Continental Can Co.*, 22 F.R.D. 241, 245 (S.D.N.Y. 1958) ("[O]nce the government itself comes into court as a party, even in the performance of a regulatory function, it waives the privilege, if any it had."); *Fleming v. Bernardi*, 1 F.R.D. 624, 625 (N.D. Ohio 1941) ("[W]hen a party seeks relief in a court of law, he must be held to have waived any privilege, which he otherwise might have had, to withhold testimony required by the rules of pleading or evidence as a basis for such relief."). See generally 4 J. Moore & J. Lucas, *Moore's Federal Practice* ¶ 26.60[6] (2d ed. 1983).

The courts that have applied the automatic waiver rule have thus offered litigants a blunt choice: Comply with discovery or face the prospect of default judgment. See *Anderson, supra*, 444 F. Supp. at 1201 ("The Court will not force disclosure of sources. The choice

is plaintiff's. If he declines to answer, the Court will entertain a motion * * * for default."'). See also *Independent Prods.*, *supra*, 22 F.R.D. at 277; *Fleming*, *supra*, 1 F.R.D. at 626.

B. The Balancing Test

Withal, adherence to the automatic waiver rule is not unanimous, with some courts favoring—explicitly or implicitly—a balancing approach, in which the need for discovery is weighed against the need for secrecy. See, e.g., *Mitchell v. Roma*, 265 F.2d 633, 637 (3d Cir. 1959) ("[W]hile we agree that one instituting a suit is governed by F.R.Civ.P., we cannot subscribe to the suggestion that by instituting such a suit a plaintiff automatically waives any privilege accorded by the Rules. * * *"); *Mertsching v. United States*, 547 F. Supp. 124, 128 (D. Colo. 1982), *aff'd per curiam*, 704 F.2d 505 (10th Cir.), *cert. denied*, 104 S. Ct. 105 (1983) ("Implicit in this reasoning [adopted by the court] is a balancing of the defendant's need for the evidence with the burden on the plaintiff's constitutional rights from disclosure."); *Jones v. B.C. Christopher & Co.*, 466 F. Supp. 213, 223 (D. Kan. 1979) ("[I]t is clear one instituting suit does not automatically waive any privilege thereby."). See generally 8 C. Wright & A. Miller, *Federal Practice and Procedure* § 2018, at 145 (1970).

C. The Hearn v. Rhay Rule

In contrast to the automatic waiver rule and the balancing test, a third approach is enunciated in *Hearn v. Rhay*, 68 F.R.D. 574 (E.D. Wash. 1975). The court there held that privileges are waived when the following three criteria are met:

- (1) assertion of the privilege was a result of some affirmative act, such as filing suit, by the asserting party; (2) through this affirmative act, the asserting party put the protected information at issue by making it relevant to the case; and (3) application of the privilege would have denied the opposing party access to information vital to his defense.

Id. at 581. The *Hearn* test has been followed by several courts. See, e.g., *Russell v. Curtin Matheson Scientific, Inc.*, 493 F. Supp. 456, 458 (S.D. Tex. 1980); *Pitney-Bowes, Inc. v. Mestre*, 86 F.R.D. 444, 447 (S.D. Fla. 1980); *United States v. Aronoff*, 466 F. Supp. 855, 863 n.9 (S.D.N.Y. 1979). See also *Sedco Int'l, S.A. v. Cory*, 683 F.2d 1201, 1206 (8th Cir.), *cert. denied*, 103 S. Ct. 379 (1982).

In the court's view, the *Hearn* test is the better reasoned approached because it avoids the pitfalls of either extreme: (1) the rigidity of the automatic waiver rule, which might permit discovery of items no vital to the movant's defense,² and (2) the indeterminacy of the balancing test and the possibility that it may deprive a party of information vital to his defense.

²The sweeping language of cases advancing the automatic waiver doctrine creates the impression that relevance and need become unimportant. See *Independent Prods.*, *supra*, 22 F.R.D. at 277 ("The Court therefore rules that these plaintiffs have waived whatever privilege they may have had by the bringing of this action.").

III. ORDER

A. Document Requests

For the foregoing reasons, the court has applied the three-part *Hearn* test in its *in camera* inspection of each of the fifteen documents for which the government claims privilege. This is to say that the court has examined each of these documents in the context of three questions: (1) Did the government's assertion of privilege stem from its affirmative act of moving for damages?; (2) Did the affirmative act place the privileged information at issue by making it relevant?; and (3) Would enforcement of the privilege deny Zenith information vital to its defense?

Applying the *Hearn* test, the court concludes that the government's privileges have been waived as to the documents and portions thereof listed below and therefore orders that the government make available to Zenith within fifteen days a true, accurate and complete copy of each of such documents or portions thereof, which production shall be governed by the protective terms and provisions of the court's order of May 13, 1981, in *Zenith Radio Corp. v. United States*, 1 CIT 289, 291-93.

SCHEDULE A³

Item 1

Memorandum dated July 20, 1983 from Alfred R. De Angelus, Deputy Commissioner of Customs, to John M. Walker, Jr., Assistant Secretary of the Treasury (Enforcement and Operations).

Item 2

Letter dated July 22, 1983 from John Walker to Lawrence J. Brady, Assistant Secretary of Commerce for Trade Administration.

Item 3

Memorandum dated July 22, 1983 from John Walker to R.T. McNamar, Deputy Secretary of the Treasury.

Item 4

Undated and unsigned draft letter from the Commissioner of Customs to Philip M. Knox, Jr., Vice President and Corporate General Counsel of Sears, Roebuck and Company.

Item 5⁴

Memorandum dated July 29, 1983 from Jordan Luke, Assistant General Counsel, Treasury Department (Enforcement and Operations) to John Walker.

Item 6

Memorandum and attached covering note dated July 29, 1983 from John Walker to R.T. McNamar.

³ The government has claimed executive privilege for each of the documents contained in this schedule. With the exception of Item 7, the documents in this schedule apparently were prepared on or before July 29, 1983, at which time the government decided not to seek interest payments from importers for the period when the injunction was in effect.

⁴ In addition to executive privilege, the government has claimed attorney-client privilege for this document.

Item 7

Memorandum dated August 2, 1983 from William von Raab, Commissioner of Customs, to Donald T. Regan, Secretary of the Treasury, with the exception of the latter portion of the first paragraph of page 1, following the word "matter."

Item 8

Undated and unsigned draft briefing memorandum, authorship not noted.

Item 9

Letter dated July 27, 1983 from Irving P. Margulies, Deputy General Counsel of the Department of Commerce, to John Walker.

SCHEDULE B ⁵*Item 1*

Memorandum dated August 4, 1983 from David M. Cohen, Director of the Commercial Litigation Branch of the Department of Justice, to Stephen J. Powell, Assistant General Counsel for Import Administration of the Department of Commerce.

Item 2

Handwritten notes to the file dated August 11, 1983, prepared by Teresa Polino, General Attorney, United States Customs Service.

Item 3

Memorandum dated August 19, 1983 from David Cohen to Stephen Powell.

Item 4

Letter dated September 6, 1983 from J. Paul McGrath, Assistant Attorney General, Civil Division, Department of Justice, to Irving Margulies.

Item 6

Letter dated September 8, 1983 from Irving Margulies to J. Paul McGrath.

On the basis of the *Hearn* test, the court sustains the government's claim of work product privilege as to Item 5 of Schedule B, a memorandum dated September 6, 1983 from Charles L. Schlumberger, an attorney in the Commercial Litigation Branch of the Department of Justice, to David Cohen.

B. Interrogatories

The government also has claimed evidentiary privileges as to certain interrogatories propounded by Zenith. More particularly, Zenith has moved to compel a full response to interrogatory 30(c), which inquired about intra-governmental communications regarding the accrual of interest under the settlement agreements. The government objects to subsection (c) of this interrogatory, which asked for "[t]he substance of the communication[s] (who said what and to whom)," and asserts claims of privilege in regard to meet-

⁵ The government has claimed work product privilege for each of the documents contained in this schedule. In addition, it has claimed attorney-client privilege for Items 1, 3, 4, and 6, and executive privilege for Item 1. The documents in this schedule were all prepared after July 29, 1983.

ings held on July 12, July 22, and July 29, 1983.⁶ For the reasons set forth in the court's consideration of Zenith's document requests, and in accordance with the *Hearn* criteria, it is ordered that the government shall provide a complete response to interrogatory 30(c) within fifteen days.

Zenith has also moved to compel supplemental responses to interrogatories 26, 27, 28, 29, 30, and 35. Interrogatories 26 through 29 inquired into the identities of government officials who participated in consideration or determination of the issue of accrual of interest. Interrogatory 30 asked about contacts in 1983 between government officials and private parties regarding this issue. Interrogatory 35 sought identification of memoranda and other notations regarding meetings and telephone conversations referred to in interrogatory 30, among others.

The government, invoking a generalized claim of privilege, has objected to these interrogatories to the extent that they seek information regarding occurrences subsequent to July 29, 1983, the date it decided not to seek interest payments from importers.⁷ For the reasons set forth in the court's consideration of Zenith's document requests, and because occurrences subsequent to July 29, 1983 may refer to prior events, the government is ordered to supplement its responses to interrogatories 26, 27, 28, 29, 30, and 35 by providing Zenith, within fifteen days, with the supplemental information it has requested.

As in the case of the documents contained in Schedules A and B, answers to the interrogatories discussed above shall be governed by the protective terms and provisions of the court's order of May 13, 1981 in *Zenith Radio Corp. v. United States*, 1 CIT 289, 291-93.

⁶ Executive privilege was claimed as to all three meetings; also, the attorney-client privilege was claimed as to the latter two meetings.

⁷ The government further objects to the interrogatories on the ground that they are too broad, vague, burdensome, seek irrelevant information, and are not calculated to lead to discovery of admissible evidence. The court finds these objections unpersuasive.

Decisions of the Court of International Trade

*Abstracts of
Decisions of the
Court of International Trade*

The following abstracts of decisions of the United States Court of International Trade are published for the information and guidance of officers and employees of the Customs Service. Decisions are not of sufficient general interest to print in full. The abstracts are intended to assist customs officials in easily locating cases and tracing the results of decisions.

the United States International Trade

Abstracts

Protest Decisions

DEPARTMENT OF THE TREASURY, *July 3, 1984.*

United States Court of International Trade at New York are officers of the customs and others concerned. Although the print in full, the summary herein given will be of assistance in citing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSES
				Item No. a
P84/210	Maletz, S.J. June 28, 1984	Pharmacia Inc.	83-4-00503	Item 799.00 4.8%
P84/211	Maletz, S.J. June 28, 1984	Pharmacia Inc.	81-12-01670	Item 799.00 4.8% or 1
P84/212	Maletz, S.J. June 28, 1984	Pharmacia Inc.	81-8-01030	Item 799.00 5%
P84/213	Carman, J. July 3, 1984	Audiovox Corp.	80-4-00673, etc.	Items 715.3, 720.02, 72 720.18, 72 and/or 72 (merchan marked " Items 688.4 688.45, 68 688.21 or (merchan marked "
P84/214	Carman, J. July 3, 1984	Chilton C.M.C. Inc.	88-3-00485	Item 661.30 8.1%
P84/215	Carman, J. July 3, 1984	Hatzlach Supply Inc.	81-5-00604	Item 716.10 through Item 716. (merchan marked " Items 720.2 720.24, or (merchan marked "

ASSESSED	HELD		
Item No. and Rate	Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE
Item 799.00 Free of duty	Item 437.76 Free of duty	Agreed statement of facts	New York Medical diagnostic kits
Item 799.00 Free of duty	Item 437.76 Free of duty	Agreed statement of facts	New York Medical diagnostic kits
Item 799.00 Free of duty	Item 437.76 Free of duty	Agreed statement of facts	New York Medical diagnostic kits
Item 715.33, 720.02, 720.16, 720.18, 720.28, and/or 720.34 merchandise marked "A")	Item 688.36 5.5% (1978 and 1979), or 5.3% (1980) or 5.1% (1981)	Agreed statement of facts	New York Electronic clocks and clock modules and radio/tape players with electronic clocks
Item 688.40, 688.45, 688.50, 688.21 or 688.50 merchandise marked "B")	Item 678.50 5% (1978 and 1979), 4.8% (1980) or 4.7% (1981)		
Item 661.30 5.3%	Item 661.68 5.3%	Agreed statement of facts	Chicago Replacement drum for malt roasting machine
Item 716.10 rough Item 716.29 merchandise marked "A")	Item 688.36 5.5% (1979), or 5.3% (1980), or 5.1% (1981)	Executive Order 12371, July 12, 1982	New York Electronic watch modules (merchandise marked "A"); watch modules, cases and bands (merchandise marked "B")
Item 720.20, 720.24, or 720.28 merchandise marked "B")	Item 688.36 5.5% (1979), or 5.3% (1980), or 5.1% (1981)		

P84/216	Carman, J. July 3, 1984	Hatzlach Supply Inc.	82-9-01266	Item 716.10 through Item 716.29 (merchandise marked "A" electronic w movements, depending o their size) Items 720.20, 720.24, 720.2 740.35 (merchandise marked "B" module port of electric watches and watch band portion)
P84/217	Carman, J. July 3, 1984	Interspur—Div. of Dart In- dustries Inc.	82-2-00172	Item 715.05 Item 716.18 38¢ each Item 720.24 17¢ plus 12. or Item 720.28 4.7% each p 9.6% Item 716.18 38¢ each Item 807.00 d free
P84/218	Maletz, S.J. July 3, 1984	Pharmacia Inc.	77-4-00699	Item 799.00 5%

16.10 ugh 16.29 chandise ted "A", ronic watch ements, nding on size) 20.20, 4, 720.28, or 5 chandise ted "B", ule portion ectric hes and h band on)	Item 688.36 5.5% (1979), or 5.3% (1980, or 5.1% (1981)	Executive Order 12371, July 12, 1982	New York Electronic watch modules
15.05 716.18 each 20.24 plus 12.8% 20.28 each plus 16.18 each 7.00 duty	Item 688.36 5.1%, with an allowance, under Item 807.00, for the U.S. components	Texas Instruments, Inc. v. U.S., 67 CCPA 59, C.A.D. 1244, 620 F.2d 1375 (1982)	New York Electronic watches and parts.
99.00	Item 437.76 Free of duty	Agreed statement of facts	New York Medical diagnostic kits

Decisions of the Court of International Trade *Abstracts* *Abstracted Reapp*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION
R84/282	Watson, J. June 28, 1984	Haruta & Co., Inc. et al	R58/7164, etc.	Export value
R84/283	Watson J. June 28, 1984	National Fittings Co. of N.Y.	R64/19029, etc.	Export value
R84/284	Carman, J. July 3, 1984	International Business Machines Corp.	82-10-01444	Appraised value

the United States International Trade

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Appraisalment Decisions

SIS OF UATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
value	F.o.b. unit invoice prices plus 20% of the differ- ence between the f.o.b. unit invoice prices and the appraised values	Agreed statement of facts	New York Tablewear and silk fabrics
value	F.o.b. unit invoice prices less 7.5% thereof	Agreed statement of facts	New York Fittings
d value	Appraised value as liqui- dated, less any additions of 3.7% made to the in- voice papers	Agreed statement of facts	Buffalo Electronic data processing machines and related parts and supplies

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION
R84/285	Carman, J. July 3, 1984	Topp Electronics Inc.	82-9-01313	Constructed value

OF TION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
value	Various values specified on entry papers by the liquidating officer excluding one-half of the amount added for assists	Agreed statement of facts	New York Not stated

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